



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20350-1000

W/ch 1  
SECNAVINST 3820.3D  
NIG-00G  
26 August 1988

SECNAV INSTRUCTION 3820.3D

From: Secretary of the Navy

Subj: OVERSIGHT OF INTELLIGENCE ACTIVITIES WITHIN THE DEPARTMENT  
OF THE NAVY

Ref: (a) Executive Order 12333  
(b) Executive Order 12334  
(c) SECNAVINST 5000.34 (NOTAL)  
(d) SECNAVINST 5720.42D  
(e) OPNAVINST 5510.1G  
(f) OPNAVINST 5040.7J (NOTAL)  
(g) MCO 5040.6D (NOTAL)

Encl: (1) DOD Directive 5240.1 of 25 Apr 88  
(2) DOD Regulation 5240.1-R of Dec 82  
(3) DOD/DOJ Agreement of 8 Dec 82 on Reporting and Use of  
Information Concerning Federal Crimes

1. Purpose. To confirm the authority and responsibility of the Secretary of the Navy for oversight of Navy and Marine Corps intelligence activities and to issue policies and procedures governing the conduct of intelligence activities, standards of conduct and ethics for employees of intelligence components, program reviews, and inspection and reporting requirements of those activities. This instruction has been substantially revised and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 3820.3C.

3. Background

a. Intelligence oversight is broader in scope than simply the protection of U.S. citizens' rights and privacy from intrusion by intelligence activities and agencies. Intelligence oversight includes the assurance that all Navy and Marine Corps intelligence activities, operations, and programs function in compliance with applicable U.S. law, statutes, directives and policies.

b. The collection, retention, and dissemination of information concerning U.S. persons and the conduct of intelligence activities by Department of the Navy (DON) intelligence components will be governed by the requirements set forth in references (a) and (b), enclosures (1) through (3), and this instruction.

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c. The assignment of responsibilities for intelligence oversight functions within DON will be per references (a) and (b), enclosures (1) through (3), and this instruction.

4. Definitions

a. DON Intelligence Components are as follows:

(1) The Office of Naval Intelligence (Director of Naval Intelligence (DNI)),

(2) Intelligence Division, U.S. Marine Corps,

(3) The Naval Intelligence Command (NAVINTCOM),

(4) The Naval Security Group Command (NAVSECGRU),

(5) Intelligence, signals intelligence and counterintelligence elements of the U.S. Marine Corps,

(6) The counterintelligence elements of the Naval Security and Investigative Command (NSIC),

(7) Naval Reserve Intelligence Program (NRIP),

(8) Other DON organizations, staffs, and offices when engaged in intelligence activities, including command intelligence staffs, activities, units, and elements of Commander in Chief, U.S. Pacific Fleet (CINCPACFLT), Commander in Chief, U.S. Atlantic Fleet (CINCLANTFLT), Commander in Chief, U.S. Naval Forces Europe (CINCUSNAVEUR), Commander, Naval Education and Training (CNET), Commander, Naval Reserve Force (COMNAVRESFOR) echelon 2, 3, 4, 5, and 6 commands that do not report operationally or administratively for intelligence oversight reporting and inspection purposes to any of the other DON intelligence components defined in subparagraph 4a(1) through 4a(7). The heads of such organizations, staffs, and offices in this subparagraph shall not be considered as heads of Department of Defense (DOD) intelligence components for purposes of approving intelligence collection activities authorized by enclosures (1) and (2).

b. Questionable activities means any conduct that constitutes, or is related to, an intelligence activity that may violate U.S. law, Executive Order, Presidential directive, reference (a), enclosures (1) and (2), or applicable DOD or DON policies.

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c. Special activities means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

d. Marine Corps intelligence components, for purposes of intelligence oversight, include the Intelligence Division, Headquarters U.S. Marine Corps, the G-2 sections of major Fleet Marine Force (FMF) commands, the two radio battalions, all interrogator-translator teams, all counterintelligence teams, the staff counterintelligence officers of major non-FMF commands and bases, and Marine Corps reserve counterparts.

e. Other terms used in this instruction are defined in enclosures (1) and (2).

5. Scope and applicability. This instruction applies to all DON intelligence components and governs all intelligence activities undertaken by such components. This instruction does not apply to authorized law enforcement activities carried out by DON intelligence components having a law enforcement mission. It does not constitute authority for any DON intelligence component to conduct an activity not otherwise authorized by law. Questions of interpretation pertaining to reference (a), enclosure (1) or (2), or this instruction should be referred to the legal office responsible for advising the DON intelligence component concerned. Questions that cannot be resolved in this manner shall be referred to the Naval Inspector General (NAVINSGEN), General Counsel of the Navy (GC), Judge Advocate General (JAG), or, as appropriate, the General Counsel of the Department of Defense (GCDOD) for resolution. Requests for exceptions or amendments to the policies or procedures issued by this instruction should be referred to NAVINSGEN.

6. Violations. This instruction at paragraphs 7b, 7c, 8h(2), reference (a) at parts 2.3, 2.4, and 2.9 to 2.12, and enclosure (2) at parts 1 to 15 constitute and shall apply as general regulatory orders. They apply to all DON personnel individually and need no further implementation. A violation of those provisions is punishable under the Uniform Code of Military Justice for military personnel and is the basis for appropriate administrative disciplinary procedures with respect to civilian employees. A violation of paragraphs 8b(3) and (4) will have the same effect with respect to the officials to whom those itemized responsibilities are addressed.

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7. Conduct of intelligence activities

a. DON intelligence components shall carry out their authorized mission and function per the policies and procedures contained in reference (a), enclosures (1) and (2), and this instruction. DON intelligence components shall carry out their authorized functions in a manner that protects the constitutional rights and privacy of U.S. persons, and shall not request any other person or entity to undertake unauthorized activities. Use of the techniques prescribed by enclosure (2) to collect information about U.S. persons shall be limited to the least intrusive means feasible.

b. DON intelligence components shall not conduct, or provide support for the conduct of, special activities without proper authorization and will comply with the reporting requirements of higher authority. Reference (c) provides guidance for the conduct and oversight of non-intelligence special activities within the DON.

c. Under no circumstances shall any DON employee engage in, or conspire for the conduct of, assassination.

8. Intelligence oversight responsibilities

a. The Chief of Naval Operations (CNO), for the Navy, and the Commandant of the Marine Corps (CMC), for the Marine Corps, shall be responsible for:

(1) Implementing reference (a), enclosures (1) through (3), and this instruction.

(2) Ensuring that the Under Secretary of the Navy (UNSECNAV), GC, JAG, NAVINSGEN, and Naval Intelligence Oversight Review Board (NIORB) (see paragraph 9 of this instruction), are kept fully and currently informed of significant and sensitive DON intelligence activities, questionable activities, and intelligence activities using any DON non-intelligence component assets, including personnel, equipment, and the like. In those instances where DON intelligence components support National Security Agency (NSA) activities, those activities need not be reported under the provisions of this subparagraph when they are subject to the current intelligence oversight activities of NSA. Nothing in this subparagraph is intended to exempt DON intelligence activities from the requirements to comply with any separate, non-intelligence oversight related, reporting requirement.

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(3) Ensuring that NAVINSGEN is kept informed of the identification of all Navy and Marine Corps organizations, staffs, and offices which, although not specifically identified as DON intelligence components, are specially tasked to collect, retain, or disseminate information for intelligence or counterintelligence purposes.

b. Heads of DON intelligence components and elements thereof, as appropriate shall be responsible for:

(1) Ensuring that all subordinate intelligence components, activities, units, and elements in or under their command comply with the requirements of reference (a), enclosures (1) and (2), and this instruction.

(2) Ensuring that their respective components do not conduct any activities that are unlawful.

(3) Reporting to NAVINSGEN any questionable activities conducted by or on behalf of their respective components.

(4) Ensuring that all intelligence activities which, in whole or in part, raise issues of legality, consistency with applicable policy, or propriety in general are given appropriate legal review prior to implementation or as soon as identified. Local Navy and Marine Corps command staff judge advocates will be actively involved and incorporated in the operational planning and review of intelligence activities. Activities or legal issues of significance should be referred for review ~~VTA~~ the GC, JAG, NAVINSGEN; Marine Corps issues shall be referred to the Counsel for the Commandant, Staff Judge Advocate to the Commandant, Deputy Naval Inspector General for Marine Corps Matters (DNIGMC), as appropriate, and prior to implementation, if possible.

(5) Ensuring that all employees of their respective components are familiar with the provisions of reference (a), enclosures (1) and (2), and this instruction, which apply to the operations and activities of their component, and are aware of the responsibilities under this instruction to report questionable activities. Intelligence oversight refresher training of all employees (military and civilian, operational and support) shall be conducted and documented on at least an annual basis.

(6) Ensuring that no adverse or retaliatory action is taken against any employee because the employee reports questionable activities under this instruction, and protecting employees fulfilling their obligations to report offenses under Article 1139 of U.S. Navy Regulation, 1973, as well as under this instruction.

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(7) Imposing such sanctions as may be appropriate on any employee who violates the provisions of reference (a) and enclosures (1) through (3).

(8) Ensuring that NAVINSGEN, GC, JAG; DNIGMC, Counsel for the Commandant, Staff Judge Advocate to the Commandant (for Marine Corps matters); GCDOD, and the Assistant to the Secretary of Defense (Intelligence Oversight) [ATSD (IO)], as appropriate, have access to all information concerning intelligence activities in the conduct of intelligence oversight responsibilities, and that employees of their components cooperate fully with such officials.

(9) Complying with references (d) and (e) when requested to release intelligence oversight inspection reports or similar or related documents.

(10) Providing to NAVINSGEN, on an annual basis no later than 1 October, a listing of all intelligence components, activities, units, and elements in or under their command. Negative reports are requested when there has been no change from the previous years report listing. This annual requirement may be submitted with the annual intelligence oversight inspection schedule defined in subparagraph 8b(11), below.

(11) Providing to the NAVINSGEN, on an annual basis no later than 1 October, a proposed intelligence oversight inspection schedule for the upcoming fiscal year for all intelligence components, activities, units, and elements in or under their command.

(12) Ensuring DON intelligence components conduct intelligence oversight inspections on all subordinate intelligence components, activities, units, and elements in or under their command at an interval of no greater than once every one and one-half years for shore activities, and every two years for afloat activities, with appropriate followup between inspections. Intelligence oversight inspections may be conducted by Inspectors General in conjunction with command inspections as defined in reference (f) for Navy intelligence components and reference (g) for Marine Corps intelligence components.

(13) Providing a quarterly intelligence oversight report to NAVINSGEN as directed in subparagraphs 10b, 10c, and 10d of this instruction. DNIGMC will consolidate report inputs from heads of Marine Corps intelligence components and provide a single Marine Corps quarterly intelligence oversight report input to NAVINSGEN for incorporation into the DON Quarterly Intelligence Oversight Report.

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c. Fleet Commanders in Chief, Commanding Generals Fleet Marine Forces, CNET, COMNAVRESFOR, in addition to those requirements outlined in paragraph 8b, shall be responsible for:

(1) Providing to NAVINSGEN, on an annual basis no later than 1 October, a listing of all echelon 2, 3, 4, 5, and 6 intelligence components, activities, units, and elements, as defined in subparagraph 4a(8), in or under their command and which do not report operationally or administratively to one of the other DON intelligence components defined in subparagraphs 4a(1) through 4a(7). Negative reports are requested when there has been no change from the previous years report listing. This annual requirement may be submitted along with the annual intelligence oversight inspection schedule. Inspectors General of Commanding Generals, Fleet Marine Forces shall submit this annual requirement to DNIGMC for consolidation into the Marine Corps integrated report to NAVINSGEN.

(2) Conducting intelligence oversight inspections on subordinate intelligence components, activities, units, and elements defined under subparagraph 8c(1). Where appropriate for efficiency and to economize the use of limited manpower resources and minimize costs, utilize lower echelon Inspectors General (IG's) to conduct intelligence oversight inspections. Intelligence oversight inspections may be conducted in conjunction with command inspections as defined in reference (f) for Navy intelligence components and reference (g) for Marine Corps intelligence components.

(3) Providing a quarterly intelligence oversight report to NAVINSGEN as directed in subparagraphs 10b, 10c, and 10d below. Intelligence oversight inspection reports completed during the reporting quarter by lower echelon IG's, in or under the command of the Fleet Commander as defined in subparagraph 4a(8) above, should be appended to the Fleet Commander's quarterly intelligence oversight report which is submitted to NAVINSGEN. Inspectors General of Commanding Generals Fleet Marine Forces should submit their quarterly intelligence oversight report to DNIGMC for consolidation into the Marine Corps integrated report to NAVINSGEN.

d. The Naval Inspector General shall be responsible for:

(1) Inspecting Navy intelligence components to ensure compliance with reference (a), enclosures (1) and (2), and this instruction.

(2) Investigating reports of questionable activities.

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(3) In the event questionable activities were conducted by, or on behalf of, a Navy intelligence component but not reported, ascertaining the reason for the failure to report such activities and recommend appropriate corrective action.

(4) Ensuring that procedures exist within all Navy intelligence components for the reporting of questionable activities, and that employees of such components are familiar with the provisions of reference (a) and enclosures (1) and (2), and are aware of their responsibilities to report such activities.

(5) Referring reports of questionable activities of a serious nature or involving a legal issue to the GC, JAG, NIOB, GCDOD or ATSD (IO), as appropriate, for a determination whether such activities are legal.

(6) Carrying out other intelligence oversight responsibilities under reference (a) and (b), enclosures (1) and (2), and this instruction.

e. The Deputy Naval Inspector General for Marine Corps Matters shall be responsible for carrying out the functions enumerated in subparagraph 8d, above, with respect to Marine Corps intelligence components, activities, units, and elements and report the results of such activities to NAVINSGEN.

f. The General Counsel, in coordination with the Judge Advocate General, shall be responsible for:

(1) Determining whether activities conducted by DON intelligence components are legal.

(2) Referring reports of questionable activities conducted by or on behalf of DON intelligence components to NAVINSGEN for investigation.

(3) Carrying out other intelligence oversight responsibilities under reference (a) and (b), enclosures (1) and (2), and this instruction.

g. Inspectors General of DON intelligence components, Fleet Commanders in Chief, Commanding Generals of Fleet Marine Forces, CNET, and COMNAVRESFOR, in addition to the requirements outlined in paragraphs 8b and 8c, shall be responsible for:

(1) Carrying out intelligence oversight responsibilities under reference (a), enclosures (1) and (2), and this instruction for their respective components.



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(2) Ensuring that reports are made to NAVINSGEN of any questionable activities conducted by or on behalf of their respective components.

(3) Assisting NAVINSGEN in the exercise of his intelligence oversight responsibilities.

(4) Conducting intelligence oversight inspections, for or on behalf of heads of DON intelligence components, on all subordinate intelligence components, activities, units, and elements, as defined in subparagraphs 4a(1) through 4a(8), above, in or under their command, at an interval of no greater than every one and one half years for ashore activities, and every two years for afloat activities, with appropriate followup between inspections. Intelligence oversight inspections may be conducted in conjunction with command inspections as defined in reference (f) for Navy intelligence components and reference (g) for Marine Corps intelligence components.

h. Employees of DON intelligence components shall be responsible for:

(1) Familiarizing themselves with the policies and procedures required by this instruction and conducting intelligence activities per reference (a), enclosures (1) and (2), and this instruction.

(2) Reporting questionable activities to any appropriate intelligence oversight official, including the Inspector General of the command or intelligence component concerned, NAVINSGEN, JAG, GC; DNIGMC, Staff Judge Advocate to the Commandant, Counsel for the Commandant (for Marine Corps matters); and GCDOD or ATSD (IO), as appropriate.

9. Naval Intelligence Oversight Review Board (NIORB).

a. The NIORB is chaired by NAVINSGEN, and its membership consists of GCJAG and the DNIGMC. When Marine Corps matters are under review by the NIORB, Staff Judge Advocate to the Commandant, and Counsel for the Commandant will also participate as members of the NIORB.

b. The NIORB is responsible for review of DON intelligence activities, programs, and plans for possible illegalities or improprieties under standards established by statute, this instruction or other applicable directives. Activities subject to this review are those conducted by DON intelligence and counterintelligence components, or intelligence

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activities conducted by other DON non-intelligence organizations. The NIORB acts in an advisory capacity to the Under Secretary of the Navy. Its receipt of briefings and review of information otherwise provided shall not be construed to constitute approval by the Under Secretary; nor shall participation on the board relieve individual members of their responsibilities and authority in their individual capacities.

c. On a quarterly basis, the chair of the NIORB will promulgate separately a listing of categories of programs, information, and individual agendas for review by the NIORB. More frequent or special-purpose meetings of the NIORB may be convened by NAVINSGEN as necessary. The NIORB will operate under procedures determined by the chairman and approved by the Under Secretary of the Navy. Security arrangements and other support will be arranged by agreement between NAVINSGEN, DNI, or Director of Intelligence U.S. Marine Corps, as appropriate. Meetings of the NIORB may be attended by the Assistant for Special Programs to the Under Secretary of the Navy, DNI, Director of Intelligence U.S. Marine Corps, and other representatives of the DON intelligence community, consistent with proper security considerations, to ensure both full exposition of the intelligence activities under review by the NIORB and reporting of the NIORB's recommendations and advice to the appropriate DON intelligence component or DON official.

#### 10. Action

a. NAVINSGEN shall submit to ATSD (IO), via JAG, GC, and UNSECNAV, a Department of the Navy Quarterly Intelligence Oversight Report covering:

(1) Any intelligence or counterintelligence activity that comes to the attention of the Navy or Marine Corps during the quarter which is reasonably believed to be illegal, improper, or contrary to reference (a), enclosures (1) and (2), this instruction, or other applicable law, statutes, directives, and policies, and corrective action taken. Such reports should include instances of espionage, noncompliance with or violations of DOD Regulation 5240.1-R procedures (enclosure (2)), and unauthorized intelligence missions or functions. Significant instances of fraud, waste, abuse, standards of conduct or ethics violations, financial misconduct, or conflicts of interest which impact upon intelligence operations should be included in the quarterly intelligence oversight report.

(2) Significant intelligence oversight activities undertaken during the quarter (i.e. inspections, training, initiatives, awareness, indoctrination, familiarization, published documents/instructions/policy).

(3) Suggestions for improvement in the intelligence oversight system.

b. The Director of Naval Intelligence; Commander Naval Intelligence Command (COMNAVINTCOM); Commander, Naval Security Group Command (COMNAVSECGRU); Commander, Naval Security and Investigative Command (COMNAVSECINVCOM); Fleet Commander in Chief's (CINCs), with respect to intelligence components, activities, units, or elements as defined in paragraph 4a(8) of this instruction, in or under their command; Director, Naval Reserve Intelligence Program (DNRIP); and DNIGMC (for the Marine Corps consolidated report input); shall submit to NAVINSGEN a quarterly intelligence oversight report covering the information in subparagraphs 10a(1) through 10a(3), above. The results of the intelligence oversight sections of command inspections conducted per reference (f) during the quarter shall be appended to such reports. Quarterly reports must be received by NAVINSGEN no later than the 15th day of the month following the end of each quarter as defined in subparagraph 10d.


c. Commanding Generals and Inspectors General of Fleet Marine Forces will comply with the reporting requirements of subparagraphs 10a(1) through 10a(3) above, and submit their quarterly intelligence oversight report to DNIGMC. The results of the intelligence oversight sections of command inspections conducted per reference (g) during the quarter shall be appended to such reports.

d. Quarterly intelligence oversight reporting periods and report due dates are defined as follows:

<u>QUARTER</u>	<u>REPORT DUE TO NAVINSGEN</u>
FIRST QUARTER (JAN/FEB/MAR)	APR 15
SECOND QUARTER (APR/MAY/JUN)	JUL 15
THIRD QUARTER (JUL/AUG/SEP)	OCT 15
FOURTH QUARTER (OCT/NOV/DEC)	JAN 15

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11. Reports. Reports required by this instruction are exempt from reports control under SECNAVINST 5214.2A.

  
H. Lawrence Garrett, III  
Secretary of the Navy

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Director, Naval Reserve Intelligence Program

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# Department of Defense DIRECTIVE

SECNAVINST 3820.3D  
2 6 AUG 1988

April 25, 1988  
NUMBER 5240.1

ASD(C3I)

SUBJECT: DoD Intelligence Activities

- References:
- (a) DoD Directive 5240.1, "Activities of DoD Intelligence Components that Affect U.S. Persons," December 3, 1982 (hereby canceled)
  - (b) Executive Order 12333, "United States Intelligence Activities," December 4, 1981
  - (c) Executive Order 12334, "President's Intelligence Oversight Board," December 4, 1981
  - (d) Public Law No. 95-511, "Foreign Intelligence Surveillance Act of 1978," October 25, 1978
  - (e) through (i), see enclosure 1

## A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a); implements references (b) through (d); updates policies; and shall be the only authority used as guidance by DoD intelligence components to collect, retain, or disseminate information concerning U.S. persons.
2. Continues in effect procedures previously approved by the U.S. Attorney General for use by DoD intelligence components under Presidential Directive NSC-9 (reference (e)).
3. Authorizes the publication of DoD 5240.1-R (reference (f)), consistent with DoD 5025.1-M (reference (g)) and this Directive.

## B. APPLICABILITY AND SCOPE

This Directive:

1. Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").
2. Applies to all intelligence activities of DoD Components.
3. Does not apply to authorized law enforcement activities carried out by DoD intelligence components having a law enforcement mission.

## C. DEFINITIONS

1. Intelligence activities. The collection, production, and dissemination of foreign intelligence and counterintelligence by DoD intelligence components authorized under reference (b).

Enclosure (1)

2. Foreign intelligence. Information relating to the capabilities, intentions, and activities of foreign powers, organizations, or persons, but not including counterintelligence, except for information on international terrorist activities.

3. Counterintelligence. Information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or international terrorist activities, but not including personnel, physical, document, or communications security programs.

4. DoD intelligence components. All DoD Components conducting intelligence activities, including the following:

- a. The National Security Agency/Central Security Service (NSA/CSS).
- b. The Defense Intelligence Agency (DIA).
- c. The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs.
- d. The Office of the Deputy Chief of Staff for Intelligence (ODCSINT), U.S. Army.
- e. The Office of Naval Intelligence (ONI).
- f. The Office of the Assistant Chief of Staff, Intelligence (OACSI), U.S. Air Force.
- g. Intelligence Division, U.S. Marine Corps.
- h. The Army Intelligence and Security Command (USAINSCOM).
- i. The Naval Intelligence Command (NIC).
- j. The Naval Security Group Command (NSGC).
- k. The Air Force Intelligence Agency (AFIA).
- l. The Electronic Security Command (ESC), U.S. Air Force.
- m. The counterintelligence elements of the Naval Security and Investigative Command (NSIC).
- n. The counterintelligence elements of the Air Force Office of Special Investigations (AFOSI).
- o. The 650th Military Intelligence Group, Supreme Headquarters Allied Powers Europe (SHAPE).
- p. Other intelligence and counterintelligence organizations, staffs, and offices, or elements thereof, when used for foreign intelligence or counterintelligence purposes. The heads of such organizations, staffs, and offices, or elements thereof, shall, however, not be considered as heads of DoD intelligence components for purposes of this Directive.

5. Special activities. Activities conducted in support of national foreign policy objectives abroad, which are planned and executed so that the role of the U.S. Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence U.S. political processes, public opinion, policies, or media, and do not include diplomatic activities or the collection and production of intelligence or related support functions.

6. United States person. A citizen of the United States; an alien known by the intelligence agency concerned to be a permanent resident alien; an unincorporated association organized in the United States or substantially composed of U.S. citizens or permanent resident aliens; or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

D. POLICY

1. All DoD intelligence activities shall be carried out in strict conformity with the U.S. Constitution, applicable law, E.O. 12333 (reference (b)), the policies and procedures authorized herein, and by other relevant DoD Directives, with special emphasis given to the protection of the constitutional rights and privacy of U.S. persons.

2. Reference (b) requires that the Department of Defense promulgate procedures to govern the collection, retention, and dissemination of information about U.S. persons, and to govern the use of certain information-gathering techniques. These procedures, approved by the Attorney General of the United States, are contained in DoD 5240.1-R (reference (f)). No DoD intelligence component shall request any person or entity to undertake unauthorized activities.

a. Authority to employ the collection techniques prescribed by DoD 5240.1-R (reference (f)) shall be limited to that necessary to perform functions assigned to the DoD intelligence component concerned. Use of such techniques to collect information about U.S. persons shall be limited to the least intrusive means feasible.

b. DoD intelligence component employees shall report all intelligence activities that may violate a law, an Executive order, a Presidential Directive, or applicable DoD policy to the Inspector General or General Counsel responsible for the DoD intelligence component concerned, or to the Assistant to the Secretary of Defense (Intelligence Oversight) (ATSD(IO)).

3. DoD Components shall not conduct, or provide support for the conduct of, special activities except in times of war declared by the Congress or during a period covered by a report from the President to the Congress under the War Powers Resolution (50 U.S.C. 1541-1548, reference (h)), unless such actions have been approved by the President and directed by the Secretary of Defense.

4. Under no circumstances shall any DoD employee engage in, or conspire to engage in, assassination.

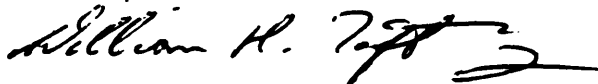


## E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (ASD(C3I)) shall provide overall policy guidance for the conduct of DoD intelligence activities.
2. The Deputy Under Secretary of Defense (Policy) (DUSD(P)) shall provide overall policy guidance for the conduct of DoD counterintelligence activities.
3. The General Counsel, Department of Defense (GC, DoD), shall:
  - a. Serve as the central focal point for contact with, and reporting to, the Attorney General regarding the legal matters arising under this Directive.
  - b. Interpret this Directive and DoD 5240.1-R (reference (f)), as may be required.
4. The Assistant to the Secretary of Defense (Intelligence Oversight) (ATSD(IO)) shall serve as the central focal point for all contacts with the President's Intelligence Oversight Board (E.O. 12334, reference (c)) and shall perform the responsibilities assigned in DoD Directive 5148.11 (reference (i)).
5. The Heads of DoD Components shall ensure that their intelligence components implement this Directive and reference (f), as appropriate.

## F. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of implementing documents to the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) and the General Counsel, Department of Defense, within 90 days.



William H. Taft, IV  
Deputy Secretary of Defense

Enclosure - 1

1. References

REFERENCES, continued

- (e) Presidential Directive NSC-9, March 30, 1977
- (f) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 11, 1982, authorized by this Directive
- (g) DoD 5025.1-M, "Directives System Procedures," April 1981, authorized by DoD Directive 5025.1, October 16, 1980
- (h) Title 50, United States Code, Sections 1541-1548, "The War Powers Resolution" (87 Stat. 555), P.L. 93-148
- (i) DoD Directive 5148.11, "Assistant to the Secretary of Defense (Intelligence Oversight)," December 1, 1982

26 AUG 1988  
DOD 5240.1-R



## **DEPARTMENT OF DEFENSE**

# **PROCEDURES GOVERNING THE ACTIVITIES OF DOD INTELLIGENCE COMPONENTS THAT AFFECT UNITED STATES PERSONS**

**DECEMBER 1982**

**UNDER SECRETARY OF DEFENSE FOR POLICY**

Enclosure (2)


FOREWORD

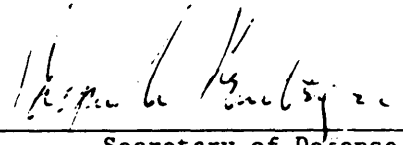
This DoD regulation sets forth procedures governing the activities of DoD intelligence components that affect United States persons. It implements DoD Directive 5240.1, and replaces the November 30, 1979 version of DoD Regulation 5240.1-R. It is applicable to all DoD intelligence components.

Executive Order 12333, "United States Intelligence Activities," stipulates that certain activities of intelligence components that affect U.S. persons be governed by procedures issued by the agency head and approved by the Attorney General. Specifically, procedures 1 through 10, as well as Appendix A, herein, require approval by the Attorney General. Procedures 11 through 15, while not requiring approval by the Attorney General, contain further guidance to DoD Components in implementing Executive Order 12333 as well as Executive Order 12334, "President's Intelligence Oversight Board".

Accordingly, by this memorandum, these procedures are approved for use within the Department of Defense. Heads of DoD components shall issue such implementing instructions as may be necessary for the conduct of authorized functions in a manner consistent with the procedures set forth herein.

This regulation is effective immediately.

  
10/4/82  
Attorney General of the  
United States

  
12/7/82  
Secretary of Defense

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## REFERENCES

- (a) Executive Order 12333, "United States Intelligence Activities," December 4, 1981
- (b) Public Law 95-511, Foreign Intelligence Surveillance Act of 1978
- (c) DoD Directive 5200.29, "DoD Technical Surveillance Countermeasures (TSCM) Survey Program," February 12, 1975
- (d) Title 18, United States Code, Chapters 105 and 119
- (e) Public Law 73-416, "Communications Act of 1934," Section 605
- (f) Title 10, United States Code, Sections 801-840, Uniform Code of Military Justice
- (g) Agreement Between the Deputy Secretary of Defense and Attorney General, April 5, 1979
- (h) Executive Order 12198, "Prescribing Amendments to the Manual for Courts-Martial, United States, 1969," March 12, 1980
- (i) DoD Directive 5525.5, "DoD Cooperation with Civilian Law Enforcement Officials," March 22, 1982
- (j) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964
- (k) DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976

PROCEDURE 1. GENERAL PROVISIONS

A. APPLICABILITY AND SCOPE

1. These procedures apply only to "DoD intelligence components," as defined in Appendix A. Procedures 2 through 4 provide the sole authority by which such components may collect, retain and disseminate information concerning United States persons. Procedures 5 through 10 set forth applicable guidance with respect to the use of certain collection techniques to obtain information for foreign intelligence and counterintelligence purposes. Authority to employ such techniques shall be limited to that necessary to perform functions assigned the DoD intelligence component concerned. Procedures 11 through 15 govern other aspects of DoD intelligence activities, including the oversight of such activities.

2. The functions of DoD intelligence components not specifically addressed herein shall be carried out in accordance with applicable policy and procedure.

3. These procedures do not apply to law enforcement activities, including civil disturbance activities, that may be undertaken by DoD intelligence components. When an investigation or inquiry undertaken pursuant to these procedures establishes reasonable belief that a crime has been committed, the DoD intelligence component concerned shall refer the matter to the appropriate law enforcement agency in accordance with procedures 12 and 15 or, if the DoD intelligence component is otherwise authorized to conduct law enforcement activities, shall continue such investigation under appropriate law enforcement procedures.

4. DoD intelligence components shall not request any person or entity to undertake any activity forbidden by Executive Order 12333 (reference (a)).

B. PURPOSE

The purpose of these procedures is to enable DoD intelligence components to carry out effectively their authorized functions while ensuring their activities that affect U.S. persons are carried out in a manner that protects the constitutional rights and privacy of such persons.

C. INTERPRETATION

1. These procedures shall be interpreted in accordance with their stated purpose.

2. All defined terms appear in Appendix A. Additional terms, not otherwise defined, are explained in the text of each procedure, as appropriate.

3. All questions of interpretation shall be referred to the legal office responsible for advising the DoD intelligence component concerned. Questions that cannot be resolved in this manner shall be referred to the General Counsel of the Military Department concerned, or, as appropriate, the General Counsel of the Department of Defense for resolution.

D. EXCEPTIONS TO POLICY

Requests for exception to the policies and procedures established herein shall be made in writing to the Deputy Under Secretary of Defense (Policy), who shall obtain the written approval of the Secretary of Defense and, if required, the Attorney General for any such exception.

E. AMENDMENT

Requests for amendment of these procedures shall be made to the Deputy Under Secretary of Defense (Policy), who shall obtain the written approval of the Secretary of Defense, and, if required, the Attorney General, for any such amendment.

PROCEDURE 2. COLLECTION OF  
INFORMATION ABOUT UNITED STATES PERSONS

A. APPLICABILITY AND SCOPE

This procedure specifies the kinds of information about United States persons that may be collected by DoD intelligence components and sets forth general criteria governing the means used to collect such information. Additional limitations are imposed in Procedures 5 through 10 on the use of specific collection techniques.

B. EXPLANATION OF UNDEFINED TERMS

1. Collection. Information shall be considered as "collected" only when it has been received for use by an employee of a DoD intelligence component in the course of his official duties. Thus, information volunteered to a DoD intelligence component by a cooperating source would be "collected" under this procedure when an employee of such component officially accepts, in some manner, such information for use within that component. Data acquired by electronic means is "collected" only when it has been processed into intelligible form.

2. Cooperating sources means persons or organizations that knowingly and voluntarily provide information to DoD intelligence components, or access to information, at the request of such components or on their own initiative. These include government agencies, law enforcement authorities, credit agencies, academic institutions, employers, and foreign governments.

3. Domestic activities refers to activities that take place within the United States that do not involve a significant connection with a foreign power, organization, or person.

4. Overt means refers to methods of collection whereby the source of the information being collected is advised, or is otherwise aware, that he is providing such information to the Department of Defense or a component thereof.

C. TYPES OF INFORMATION THAT MAY BE COLLECTED ABOUT UNITED STATES PERSONS

Information that identifies a United States person may be collected by a DoD intelligence component only if it is necessary to the conduct of a function assigned the collecting component, and only if it falls within one of the following categories:

1. Information obtained with consent. Information may be collected about a United States person who consents to such collection.

2. Publicly available information. Information may be collected about a United States person if it is publicly available.

3. Foreign intelligence. Subject to the special limitation contained in section E, below, information may be collected about a United States person if the information constitutes foreign intelligence, provided the intentional collection of foreign intelligence about United States persons shall be limited to persons who are:

- a. Individuals reasonably believed to be officers or employees, or otherwise acting for or on behalf, of a foreign power;
- b. An organization reasonably believed to be owned or controlled, directly or indirectly, by a foreign power;
- c. Persons or organizations reasonably believed to be engaged or about to engage, in international terrorist or international narcotics activities;
- d. Persons who are reasonably believed to be prisoners of war; missing in action; or are the targets, the hostages, or victims of international terrorist organizations; or
- e. Corporations or other commercial organizations believed to have some relationship with foreign powers, organizations, or persons.

4. Counterintelligence. Information may be collected about a United States person if the information constitutes counterintelligence, provided the intentional collection of counterintelligence about United States persons must be limited to:

- a. Persons who are reasonably believed to be engaged in, or about to engage in, intelligence activities on behalf of a foreign power, or international terrorist activities.
- b. Persons in contact with persons described in paragraph C.4.a., above, for the purpose of identifying such person and assessing their relationship with persons described in paragraph C.4.a., above.

5. Potential sources of assistance to intelligence activities. Information may be collected about United States persons reasonably believed to be potential sources of intelligence, or potential sources of assistance to intelligence activities, for the purpose of assessing their suitability or credibility. This category does not include investigations undertaken for personnel security purposes.

6. Protection of intelligence sources and methods. Information may be collected about a United States person who has access to, had access to, or is otherwise in possession of, information which reveals foreign intelligence and counterintelligence sources or methods, when collection is reasonably believed necessary to protect against the unauthorized disclosure of such information; provided that within the United States, intentional collection of such information shall be limited to persons who are:

- a. Present and former DoD employees;

b. Present or former employees of a present or former DoD contractor;  
and

c. Applicants for employment at DoD or at a contractor of DoD.

7. Physical security. Information may be collected about a United States person who is reasonably believed to threaten the physical security of DoD employees, installations, operations, or official visitors. Information may also be collected in the course of a lawful physical security investigation.

8. Personnel security. Information may be collected about a United States person that arises out of a lawful personnel security investigation.

9. Communications security. Information may be collected about a United States person that arises out of a lawful communications security investigation.

10. Narcotics. Information may be collected about a United States person who is reasonably believed to be engaged in international narcotics activities.

11. Threats to safety. Information may be collected about a United States person when the information is needed to protect the safety of any person or organization, including those who are targets, victims, or hostages of international terrorist organizations.

12. Overhead reconnaissance. Information may be collected from overhead reconnaissance not directed at specific United States persons.

13. Administrative purposes. Information may be collected about a United States person that is necessary for administrative purposes.

D. GENERAL CRITERIA GOVERNING THE MEANS USED TO COLLECT INFORMATION ABOUT UNITED STATES PERSONS

1. Means of collection. DoD intelligence components are authorized to collect information about United States persons by any lawful means, provided that all such collection activities shall be carried out in accordance with E.O. 12333 (reference (a)), and this Regulation, as appropriate.

2. Least intrusive means. The collection of information about United States persons shall be accomplished by the least intrusive means. In general, this means the following:

a. To the extent feasible, such information shall be collected from publicly available information or with the consent of the person concerned;

b. If collection from these sources is not feasible or sufficient, such information may be collected from cooperating sources;

c. If collection from cooperating sources is not feasible or sufficient, such information may be collected, as appropriate, using other lawful investigative techniques that do not require a judicial warrant or the approval of the Attorney General; then

d. If collection through use of these techniques is not feasible or sufficient, approval for use of investigative techniques that do require a judicial warrant or the approval of the Attorney General may be sought.

E. SPECIAL LIMITATION ON THE COLLECTION OF FOREIGN INTELLIGENCE WITHIN THE UNITED STATES.

Within the United States, foreign intelligence concerning United States persons may be collected only by overt means unless all the following conditions are met:

1. The foreign intelligence sought is significant and collection is not undertaken for the purpose of acquiring information concerning the domestic activities of any United States person;
2. Such foreign intelligence cannot be reasonably obtained by overt means;
3. The collection of such foreign intelligence has been coordinated with the Federal Bureau of Investigation (FBI); and
4. The use of other than overt means has been approved in writing by the head of the DoD intelligence component concerned, or his single designee, as being consistent with these procedures. A copy of any approval made pursuant to this section shall be provided the Deputy Under Secretary of Defense (Policy).



PROCEDURE 3. RETENTION OF INFORMATION  
ABOUT UNITED STATES PERSONS

A. APPLICABILITY

This procedure governs the kinds of information about United States persons that may knowingly be retained by a DoD intelligence component without the consent of the person whom the information concerns. It does not apply when the information in question is retained solely for administrative purposes or is required by law to be maintained.

B. EXPLANATION OF UNDEFINED TERMS

The term "retention," as used in this procedure, refers only to the maintenance of information about United States persons which can be retrieved by reference to the person's name or other identifying data.

C. CRITERIA FOR RETENTION

1. Retention of information collected under Procedure 2. Information about United States persons may be retained if it was collected pursuant to Procedure 2.

2. Retention of Information Acquired Incidentally. Information about United States persons collected incidentally to authorized collection may be retained if:

a. Such information could have been collected intentionally under Procedure 2;

b. Such information is necessary to understand or assess foreign intelligence or counterintelligence;

c. The information is foreign intelligence or counterintelligence collected from electronic surveillance conducted in compliance with this Regulation; or

d. Such information is incidental to authorized collection and may indicate involvement in activities that may violate federal, state, local, or foreign law.

3. Retention of information relating to functions of other DoD Components or non-DoD Agencies. Information about United States persons that pertains solely to the functions of other DoD Components or agencies outside the Department of Defense shall be retained only as necessary to transmit or deliver such information to the appropriate recipients.

4. Temporary retention. Information about United States persons may be retained temporarily, for a period not to exceed 90 days, solely for the purpose of determining whether that information may be permanently retained under these procedures.

5. Retention of other information. Information about United States persons other than that covered by subsections C.1. through 4., above, shall be retained only for purposes of reporting such collection for oversight purposes and for any subsequent proceedings that may be necessary.

D. ACCESS AND RETENTION

1. Controls on access to retained information. Access within a DoD intelligence component to information about United States persons retained pursuant to this procedure shall be limited to those with a need to know.

2. Duration of retention. Disposition of information about United States persons retained in the files of DoD intelligence components will comply with the disposition schedules approved by the Archivist of the United States for the files or records in which the information is retained.

3. Information acquired prior to effective date. Information acquired prior to the effective date of this procedure may be retained by DoD intelligence components without being screened for compliance with this procedure or Executive Order 12333 (reference (a)), so long as retention was in compliance with applicable law and previous executive orders.

PROCEDURE 4. DISSEMINATION OF INFORMATION  
ABOUT UNITED STATES PERSONS

A. APPLICABILITY AND SCOPE

This procedure governs the kinds of information about United States persons that may be disseminated, without their consent, outside the DoD intelligence component that collected and retained the information. It does not apply to information collected solely for administrative purposes; or disseminated pursuant to law; or pursuant to a court order that otherwise imposes controls upon such dissemination.

B. CRITERIA FOR DISSEMINATION

Except as provided in section C., below, information about United States persons that identifies those persons may be disseminated without the consent of those persons only under the following conditions:

1. The information was collected or retained or both under Procedures 2 and 3;

2. The recipient is reasonably believed to have a need to receive such information for the performance of a lawful governmental function, and is one of the following:

a. An employee of the Department of Defense, or an employee of a contractor of the Department of Defense, and has a need for such information in the course of his or her official duties;

b. A law enforcement entity of federal, state, or local government, and the information may indicate involvement in activities which may violate laws which the recipient is responsible to enforce;

c. An agency within the intelligence community; provided that within the intelligence community, information other than information derived from signals intelligence, may be disseminated to each appropriate agency for the purpose of allowing the recipient agency to determine whether the information is relevant to its responsibilities without such a determination being required of the disseminating DoD intelligence component;

d. An agency of the federal government authorized to receive such information in the performance of a lawful governmental function; or

e. A foreign government, and dissemination is undertaken pursuant to an agreement or other understanding with such government.

C. OTHER DISSEMINATION

Any dissemination that does not conform to the conditions set forth in section B., above, must be approved by the legal office responsible for advising the DoD Component concerned after consultation with the Department of Justice and General Counsel of the Department of Defense. Such approval shall be based on a determination that the proposed dissemination complies with applicable laws, executive orders, and regulations.

## PROCEDURE 5. ELECTRONIC SURVEILLANCE

PART 1: ELECTRONIC SURVEILLANCE IN THE UNITED STATES FOR INTELLIGENCE PURPOSESA. APPLICABILITY

This part of Procedure 5 implements the Foreign Intelligence Surveillance Act of 1978 (reference (b)), and applies to electronic surveillance, as defined in that Act, conducted by DoD intelligence components within the United States to collect "foreign intelligence information," as defined in that Act.

B. GENERAL RULES

1. Electronic surveillance pursuant to the Foreign Intelligence Surveillance Act. A DoD intelligence component may conduct electronic surveillance within the United States for foreign intelligence and counterintelligence purposes only pursuant to an order issued by a judge of the court appointed pursuant to the Foreign Intelligence Surveillance Act of 1978 (reference (b)), or pursuant to a certification of the Attorney General issued under the authority of section 102(a) of the Act.

2. Authority to request electronic surveillance. Authority to approve the submission of applications or requests for electronic surveillance under the Foreign Intelligence Surveillance Act of 1978 (reference (b)) shall be limited to the Secretary of Defense, the Deputy Secretary of Defense, the Secretary or Under Secretary of a Military Department; and the Director of the National Security Agency. Applications for court orders will be made through the Attorney General after prior clearance by the General Counsel, DoD. Requests for Attorney General certification shall be made only after prior clearance by the General Counsel, DoD.

3. Electronic surveillance in emergency situations.

a. A DoD intelligence component may conduct electronic surveillance within the United States in emergency situations under an approval from the Attorney General in accordance with section 105(e) of reference (b).

b. The head of any DoD intelligence component may request that the DoD General Counsel seek such authority directly from the Attorney General in an emergency, if it is not feasible to submit such request through an official designated in subsection B.2., above, provided the appropriate official concerned shall be advised of such requests as soon as possible thereafter.

## PROCEDURE 5. ELECTRONIC SURVEILLANCE, continued

### PART 2: ELECTRONIC SURVEILLANCE OUTSIDE THE UNITED STATES FOR INTELLIGENCE PURPOSES

#### A. APPLICABILITY

This part of Procedure 5 applies to electronic surveillance, as defined in Appendix A, for foreign intelligence and counterintelligence purposes directed against United States persons who are outside the United States, and who, under the circumstances, have a reasonable expectation of privacy. It is intended to be applied in conjunction with the regulation of electronic surveillance "within the United States" under Part 1 and the regulation of "signals intelligence activities" under Part 3, so that the intentional interception for foreign intelligence and counterintelligence purposes of all wire or radio communications of persons within the United States and against United States persons abroad where such persons enjoy a reasonable expectation of privacy is covered by one of the three parts. In addition, this part governs the use of electronic, mechanical, or other surveillance devices for foreign intelligence and counterintelligence purposes against a United States person abroad in circumstances where such person has a reasonable expectation of privacy. This part does not apply to the electronic surveillance of communications of other than United States persons abroad or the interception of the communications of United States persons abroad that do not constitute electronic surveillance.

#### B. EXPLANATION OF UNDEFINED TERMS

1. Electronic surveillance is "directed against a United States person" when the surveillance is intentionally targeted against or designed to intercept the communications of that person. Electronic surveillance directed against persons who are not United States persons that results in the incidental acquisition of the communications of a United States person does not thereby become electronic surveillance directed against a United States person.

2. Electronic surveillance is "outside the United States" if the person against whom the electronic surveillance is directed is physically outside the United States, regardless of the location at which surveillance is conducted. For example, the interception of communications that originate and terminate outside the United States can be conducted from within the United States and still fall under this part rather than Part 1.

#### C. PROCEDURES

Except as provided in section D., below, DoD intelligence components may conduct electronic surveillance against a United States person who is outside the United States for foreign intelligence and counterintelligence purposes only if the surveillance is approved by the Attorney General. Requests for approval will be forwarded to the Attorney General by an official designated in section E.1., below. Each request shall include:

1. An identification or description of the target.

2. A statement of the facts supporting a finding that:

a. There is probable cause to believe the target of the electronic surveillance is one of the following:

(1) A person who, for or on behalf of a foreign power is engaged in clandestine intelligence activities (including covert activities intended to affect the political or governmental process), sabotage, or international terrorist activities, or activities in preparation for international terrorist activities; or who conspires with, or knowingly aids and abets a person engaging in such activities;

(2) A person who is an officer or employee of a foreign power;

(3) A person unlawfully acting for, or pursuant to the direction of, a foreign power. The mere fact that a person's activities may benefit or further the aims of a foreign power is not enough to bring that person under this subsection, absent evidence that the person is taking direction from, or acting in knowing concert with, the foreign power;

(4) A corporation or other entity that is owned or controlled directly or indirectly by a foreign power; or

(5) A person in contact with, or acting in collaboration with, an intelligence or security service of a foreign power for the purpose of providing access to information or material classified by the United States to which such person has access.

b. The electronic surveillance is necessary to obtain significant foreign intelligence or counterintelligence.

c. The significant foreign intelligence or counterintelligence expected to be obtained from the electronic surveillance could not reasonably be obtained by other less intrusive collection techniques.

3. A description of the significant foreign intelligence or counterintelligence expected to be obtained from the electronic surveillance.

4. A description of the means by which the electronic surveillance will be effected.

5. If physical trespass is required to effect the surveillance, a statement of facts supporting a finding that the means involve the least amount of intrusion that will accomplish the objective.

6. A statement of period of time, not to exceed 90 days, for which the electronic surveillance is required.

7. A description of the expected dissemination of the product of the surveillance, including a description of the procedures that will govern the retention and dissemination of communications of or concerning United States persons other than those targetted, acquired incidental to such surveillance.

D. ELECTRONIC SURVEILLANCE IN EMERGENCY SITUATIONS

Notwithstanding section C., above, a DoD intelligence component may conduct surveillance directed at a United States person who is outside the United States in emergency situations under the following limitations:

1. Officials designated in section E., below, may authorize electronic surveillance directed at a United States person outside the United States in emergency situations, when securing the prior approval of the Attorney General is not practical because:

a. The time required would cause failure or delay in obtaining significant foreign intelligence or counterintelligence and such failure or delay would result in substantial harm to the national security;

b. A person's life or physical safety is reasonably believed to be in immediate danger; or

c. The physical security of a defense installation or government property is reasonably believed to be in immediate danger.

2. Except for actions taken under paragraph D.1.b., above, any official authorizing such emergency surveillance shall find that one of the criteria contained in paragraph C.2.a., above, is met. Such officials shall notify the DoD General Counsel promptly of any such surveillance, the reason for authorizing such surveillance on an emergency basis, and the expected results.

3. The Attorney General shall be notified by the General Counsel, DoD, as soon as possible of the surveillance, the circumstances surrounding its authorization, and the results thereof, and such other information as may be required to authorize continuation of such surveillance.

4. Electronic surveillance authorized pursuant to this section may not continue longer than the time required for a decision by the Attorney General and in no event longer than 72 hours.

E. OFFICIALS AUTHORIZED TO REQUEST AND APPROVE ELECTRONIC SURVEILLANCE OUTSIDE THE UNITED STATES

1. The following officials may request approval of electronic surveillance outside the United States under section C., above, and approve emergency surveillance under section D., above:

a. The Secretary and Deputy Secretary of Defense.

b. The Secretaries and Under Secretaries of the Military Departments.

c. The Director and Deputy Director of the National Security Agency/Chief, Central Security Service.

2. Authorization for emergency electronic surveillance under section D. may also be granted by:

a. Any general or flag officer at the overseas location in question, having responsibility for either the subject of the surveillance, or responsibility for the protection of the persons, installations, or property that is endangered; or

b. The Deputy Director for Operations, National Security Agency.



## PROCEDURE 5. ELECTRONIC SURVEILLANCE, continued

PART 3: SIGNALS INTELLIGENCE ACTIVITIESA. APPLICABILITY AND SCOPE

1. This procedure governs the conduct by the United States Signals Intelligence System of signals intelligence activities that involve the collection, retention, and dissemination of foreign communications and military tactical communications. Such activities may incidentally involve the collection of information concerning United States persons without their consent, or may involve communications originated or intended for receipt in the United States, without the consent of a party thereto.

2. This part of Procedure 5 shall be supplemented by a classified Annex promulgated by the Director, National Security Agency/Chief, Central Security Service, which shall also be approved by the Attorney General. That regulation shall provide that signals intelligence activities which constitute electronic surveillance, as defined in Parts 1 and 2 of this procedure, will be authorized in accordance with those parts. Any information collected incidentally about United States persons shall be subjected to minimization procedures approved by the Attorney General.

B. EXPLANATION OF UNDEFINED TERMS

1. Communications concerning a United States person are those in which the United States person is identified in the communication. A United States person is identified when the person's name, unique title, address or other personal identifier is revealed in the communication in the context of activities conducted by that person or activities conducted by others and related to that person. A reference to a product by brand name or manufacturer's name or the use of a name in a descriptive sense, as, for example, "Monroe Doctrine," is not an identification of a United States person.

2. Interception means the acquisition by the United States Signals Intelligence system through electronic means of a nonpublic communication to which it is not an intended party; and the processing of the contents of that communication into an intelligible form but not including the display of signals on visual display devices intended to permit the examination of the technical characteristics of the signals without reference to the information content carried by the signals.

3. Military tactical communications means United States and allied military exercise communications within the United States and abroad necessary for the production of simulated foreign intelligence and counterintelligence or to permit an analysis of communications security.

4. United States person. For purposes of signals intelligence activities only, the following guidelines will apply in determining whether a person is a United States person:

a. A person known to be currently in the United States will be treated as a United States person unless the nature of the person's communications or other available information concerning the person gives rise to a reasonable belief that such person is not a United States citizen or permanent resident alien.

b. A person known to be currently outside the United States, or whose location is not known, will not be treated as a United States person unless the nature of the person's communications or other available information concerning the person give rise to a reasonable belief that such person is a United States citizen or permanent resident alien.

c. A person known to be an alien admitted for permanent residence may be assumed to have lost status as a United States person if the person leaves the United States and it is known that the person is not in compliance with the administrative formalities provided by law that enable such persons to reenter the United States without regard to the provisions of law that would otherwise restrict an alien's entry into the United States. The failure to follow the statutory procedures provides a reasonable basis to conclude that such alien has abandoned any intention of maintaining status as a permanent resident alien.

d. An unincorporated association whose headquarters are located outside the United States may be presumed not to be a United States person unless the collecting agency has information indicating that a substantial number of members are citizens of the United States or aliens lawfully admitted for permanent residence.

5. United States Signals Intelligence System means the unified organization for signals intelligence activities under the direction of the Director, National Security Agency/Chief, Central Security Service, comprised of the National Security Agency, the Central Security Service, the components of the military services authorized to conduct signals intelligence and such other entities (other than the Federal Bureau of Investigation) as are authorized by the National Security Council or the Secretary of Defense to conduct signals intelligence. FBI activities are governed by procedures promulgated by the Attorney General.

### C. PROCEDURES

1. Foreign communications. The United States Signals Intelligence System may collect, process, retain, and disseminate foreign communications that are also communications of or concerning United States persons, but only in accordance with the classified annex to this procedure.

2. Military tactical communications. The United States Signals Intelligence System may collect, process, retain, and disseminate military tactical communications that are also communications of or concerning United States persons but only in accordance with the classified annex to this procedure.

a. Collection. Collection efforts will be conducted in the same manner as in the case of signals intelligence for foreign intelligence purposes and must be designed in such a manner as to avoid to the extent feasible the intercept of communications not related to military exercises.

b. Retention and processing. Military tactical communications may be retained and processed without deletion of references to United States persons who are participants in, or are otherwise mentioned in exercise-related communications, provided that the communications of United States persons not participating in the exercise that are inadvertently intercepted during the exercise shall be destroyed as soon as feasible.

c. Dissemination. Dissemination of military tactical communications and exercise reports or information files derived from such communications shall be limited to those authorities and persons participating in or conducting reviews and critiques of such exercise.

## PROCEDURE 5. ELECTRONIC SURVEILLANCE, continued

PART 4: TECHNICAL SURVEILLANCE COUNTERMEASURESA. APPLICABILITY AND SCOPE

This part of Procedure 5 applies to the use of electronic equipment to determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance. It implements section 105(f)(2) of the Foreign Intelligence Surveillance Act (reference (b)).

B. EXPLANATION OF UNDEFINED TERMS

The term technical surveillance countermeasures refers to activities authorized pursuant to DoD Directive 5200.29 (reference (c)), and, as used in this procedure, refers to the use of electronic surveillance equipment, or electronic or mechanical devices, solely for determining the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, or for determining the susceptibility of electronic equipment to unlawful electronic surveillance.

C. PROCEDURES

A DoD intelligence component may use technical surveillance countermeasures that involve the incidental acquisition of the nonpublic communications of United States persons without their consent, provided:

1. The use of such countermeasures has been authorized or consented to by the official in charge of the facility, organization, or installation where the countermeasures are to be undertaken;

2. The use of such countermeasures is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

3. Access to the content of communications acquired during the use of countermeasures is limited to persons involved directly in conducting such measures, and any content acquired is destroyed as soon as practical or upon completion of the particular use. However, if the content is acquired within the United States, only information which is necessary to protect against unauthorized electronic surveillance, or to enforce Chapter 119 of title 18, United States Code (reference (d)) and Section 605 of the Communication Act of 1934 (reference (e)), may be retained and disseminated only for these purposes. If acquired outside the United States, information which indicates a violation of federal law, including the Uniform Code of Military Justice (reference (f)), or a clear and imminent threat to life or property, may also be disseminated to appropriate law enforcement authorities. A record of the types of communications and information subject to acquisition by the illegal electronic surveillance equipment may be retained.

## PROCEDURE 5. ELECTRONIC SURVEILLANCE, continued

PART 5: DEVELOPING, TESTING, AND CALIBRATION OF ELECTRONIC EQUIPMENTA. APPLICABILITY

This part of Procedure 5 applies to developing, testing, or calibrating electronic equipment that can intercept or process communications and non-communications signals. It also includes research and development that needs electronic communications as a signal source.

B. PROCEDURES1. Signals authorized for use.a. The following may be used without restriction:

- (1) Laboratory-generated signals.
- (2) Communications signals with the consent of the communicator.
- (3) Communications in the commercial or public service broadcast bands.

(4) Communications transmitted between terminals located outside of the United States not used by any known United States person.

(5) Noncommunications signals (including telemetry, and radar).

b. Communications subject to lawful electronic surveillance under the provisions of Parts 1, 2, or 3 of this procedure may be used subject to the minimization procedures applicable to such surveillance.

c. Any of the following may be used subject to the restrictions of subsection B.2., below.

(1) Communications over official government communications circuits with consent from an appropriate official of the controlling agency.

(2) Communications in the citizens and amateur-radio bands.

d. Other signals may be used only when it is determined that it is not practical to use the signals described above and it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance. The restrictions of subsection B.2., below, will apply in such cases. The Attorney General must approve use of signals pursuant to this subsection for the purpose of development, testing, or calibration when the period of use exceeds 90 days. When Attorney General approval is required, the DoD intelligence component shall submit a test proposal to the General Counsel, DoD, or the NSA General Counsel for transmission to the Attorney General for approval. The test proposal shall state the requirement for a period beyond 90 days, the nature of the activity, the organization that will conduct the activity, and the proposed disposition of any signals or communications acquired during the activity.

2. Restrictions.

For signals described in paragraph B.1.c. and d., above, the following restrictions apply:

a. The surveillance shall be limited in scope and duration to that necessary for the purposes referred to in section A., above.

b. No particular United States person shall be targeted intentionally without consent.

c. The content of any communication shall:

(1) Be retained only when actually needed for the purposes referred to in section A. above,

(2) Be disseminated only to persons conducting the activity,  
and

(3) Be destroyed immediately upon completion of the activity.

d. The technical parameters of a communication (such as frequency, modulation, bearing, signal strength, and time of activity) may be retained and used for the purposes outlined in section A., above, or for collection avoidance purposes. Such parameters may be disseminated to other DoD intelligence components and other entities authorized to conduct electronic surveillance or related development, testing, and calibration of electronic equipment provided such dissemination and use are limited to the purposes outlined in section A. or collection avoidance purposes. No content of any communication may be retained or used other than as provided in paragraph B.2.c., above.

## PROCEDURE 5. ELECTRONIC SURVEILLANCE, continued

PART 6. TRAINING OF PERSONNEL IN THE OPERATION AND USE OF ELECTRONIC COMMUNICATIONS AND SURVEILLANCE EQUIPMENTA. APPLICABILITY

This part of Procedure 5 applies to the training of personnel by DoD intelligence components in the operation and use of electronic communications and surveillance equipment. It does not apply to the interception of communications with the consent of one of the parties to the communication or to the training of intelligence personnel by nonintelligence components.

B. PROCEDURES

1. Training guidance. The training of personnel by DoD intelligence components in the operation and use of electronic communications and surveillance equipment shall include guidance concerning the requirements and restrictions of the Foreign Intelligence Surveillance Act of 1978 (reference (b)), and E.O. 12333 (reference (a)), with respect to the unauthorized acquisition and use of the content of communications of United States persons.

2. Training limitations

a. Except as permitted by paragraph B.2.b. and c., below, the use of electronic communications and surveillance equipment for training purposes is permitted, subject to the following limitations:

(1) To the maximum extent practical, use of such equipment for training purposes shall be directed against communications which are subject to lawful electronic surveillance for foreign intelligence and counterintelligence purposes under Parts 1, 2, and 3 of this procedure.

(2) The contents of private communications of nonconsenting United States persons may not be acquired aurally unless the person is an authorized target of electronic surveillance.

(3) The electronic surveillance will be limited in extent and duration to that necessary to train personnel in the use of the equipment.

b. Public broadcasts, distress signals, or official U.S. Government communications may be monitored, provided that when government agency communications are monitored, the consent of an appropriate official is obtained.

c. Minimal acquisition of information is permitted as required for calibration purposes.

3. Retention and dissemination. Information collected during training that involves communications described in subparagraph B.2.a.(1), above, shall be retained and disseminated in accordance with minimization procedures applicable to that electronic surveillance. Information collected during training that does not involve communications described in subparagraph B.2.a.(1), above, or that is acquired inadvertently, shall be destroyed as soon as practical or upon completion of the training and may not be disseminated for any purpose. This limitation does not apply to distress signals.

PROCEDURE 5. ELECTRONIC SURVEILLANCE, continued

PART 7: CONDUCT OF VULNERABILITY AND HEARABILITY SURVEYS

A. APPLICABILITY AND SCOPE

This part of Procedure 5 applies to the conduct of vulnerability surveys and hearability surveys by DoD intelligence components.

B. EXPLANATION OF UNDEFINED TERMS

1. The term vulnerability survey refers to the acquisition of radio frequency propagation and its subsequent analysis to determine empirically the vulnerability of the transmission media to interception by foreign intelligence services.

2. The term hearability survey refers to monitoring radio communications to determine whether a particular radio signal can be received at one or more locations and, if reception is possible, to determine the quality of reception over time.

C. PROCEDURES

1. Conduct of vulnerability surveys. Nonconsensual surveys may be conducted to determine the potential vulnerability to intelligence services of a foreign power of transmission facilities of communications common carriers, other private commercial entities, and entities of the federal government, subject of the following limitations:

a. No vulnerability survey may be conducted without the prior written approval of the Director, National Security Agency, or his designee.

b. No transmission may be acquired aurally.

c. No content of any transmission may be acquired by any means.

d. No transmissions may be recorded.

e. No report or log may identify any United States person or entity except to the extent of identifying transmission facilities that are vulnerable to surveillance by foreign powers. If the identities of the users of such facilities are not identical with the identities of the owners of the facilities, the identity of such users may be obtained but not from the content of the transmissions themselves, and may be included in such report or log. Reports may be disseminated. Logs may be disseminated only if required to verify results contained in reports.

2. Conduct of hearability surveys. The Director, National Security Agency, may conduct, or may authorize the conduct by other agencies, of hearability surveys of telecommunications that are transmitted in the United States.



a. Collection. When practicable, consent will be secured from the owner or user of the facility against which the hearability survey is to be conducted prior to the commencement of the survey.

b. Processing and Storage. Information collected during a hearability survey must be processed and stored as follows:

(1) The content of communications may not be recorded or included in any report.

(2) No microwave transmission may be demultiplexed or demodulated for any purpose.

(3) No report or log may identify any person or entity except to the extent of identifying the transmission facility that can be intercepted from the intercept site. If the identities of the users of such facilities are not identical with the identities of the owners of the facilities, and their identities are relevant to the purpose for which the hearability survey has been conducted, the identity of such users may be obtained provided such identities may not be obtained from the contents of the transmissions themselves.

c. Dissemination. Reports may be disseminated only within the U.S. Government. Logs may not be disseminated unless required to verify results contained in reports.

## PROCEDURE 6. CONCEALED MONITORING

A. APPLICABILITY AND SCOPE

1. This procedure applies to concealed monitoring only for foreign intelligence and counterintelligence purposes conducted by a DoD intelligence component within the United States or directed against a United States person who is outside the United States where the subject of such monitoring does not have a reasonable expectation of privacy, as explained in section B., below, and no warrant would be required if undertaken for law enforcement purposes.

2. Concealed monitoring in the United States for foreign intelligence and counterintelligence purposes where the subject of such monitoring has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes shall be treated as "electronic surveillance within the United States" under Part 1 of Procedure 5, and processed pursuant to that procedure.

3. Concealed monitoring for foreign intelligence and counterintelligence purposes of a United States person abroad where the subject of such monitoring has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes shall be treated as "electronic surveillance outside the United States" under Part 2 of Procedure 5, and processed pursuant to that procedure.

4. Concealed monitoring for foreign intelligence and counterintelligence purposes when the monitoring is a signals intelligence activity shall be conducted pursuant to Part 3 of Procedure 5.

B. EXPLANATION OF UNDEFINED TERMS

1. Concealed monitoring means targetting by electronic, optical, or mechanical devices a particular person or a group of persons without their consent in a surreptitious and continuous manner. Monitoring is surreptitious when it is targeted in a manner designed to keep the subject of the monitoring unaware of it. Monitoring is continuous if it is conducted without interruption for a substantial period of time.

2. Monitoring is within the United States if the monitoring device, or the target of the monitoring, is located within the United States.

3. Whether concealed monitoring is to occur where the subject has a reasonable expectation of privacy is a determination which depends upon the circumstances of a particular case, and shall be made only after consultation with the legal office responsible for advising the DoD intelligence component concerned. Reasonable expectation of privacy is the extent to which a reasonable person in the particular circumstances involved is entitled to believe his or her actions are not subject to monitoring by electronic, optical, or mechanical devices. For example, there are ordinarily reasonable expectations of privacy in work spaces if a person's actions and papers are not subject to ready observation by others under normal working conditions. Conversely, a person walking out of his or her residence into a public street ordinarily would not have a reasonable expectation that he or she is not being observed or even photographed; however, such a person ordinarily would have an expectation of privacy within his or her residence.

## C. PROCEDURES

1. Limitations on use of concealed monitoring. Use of concealed monitoring under circumstances when the subject of such monitoring has no reasonable expectation of privacy is subject to the following limitations:

a. Within the United States, a DoD intelligence component may conduct concealed monitoring only on an installation or facility owned or leased by DoD, or otherwise in the course of an investigation conducted pursuant to the Agreement Between the Secretary of Defense and the Attorney General (reference (g)).

b. Outside the United States, such monitoring may be conducted on installations and facilities owned or leased by the Department of Defense. Monitoring outside such facilities shall be conducted after coordination with appropriate host country officials, if such coordination is required by the governing Status of Forces Agreement, and with the Central Intelligence Agency.

2. Required determination. Concealed monitoring conducted under subsection C.1., requires approval by an official designated in subsection C.3., below, based on a determination that such monitoring is necessary to the conduct of assigned foreign intelligence or counterintelligence functions, and does not constitute electronic surveillance under Parts 1 or 2 of Procedure 5.

3. Officials authorized to approve concealed monitoring. Officials authorized to approve concealed monitoring under this procedure include the Deputy Under Secretary of Defense (Policy); the Director, Defense Intelligence Agency; the Director, National Security Agency; the Assistant Chief of Staff for Intelligence, Department of Army; the Director, Naval Intelligence; the Director of Intelligence, U.S. Marine Corps; the Assistant Chief of Staff, Intelligence, U.S. Air Force; the Commanding General, Army Intelligence and Security Command; the Director, Naval Investigative Service; and the Commanding Officer, Air Force Office of Special Investigations.

## PROCEDURE 7. PHYSICAL SEARCHES

A. APPLICABILITY

This procedure applies to unconsented physical searches of any person or property within the United States and to physical searches of the person or property of a United States person outside the United States by DoD intelligence components for foreign intelligence or counterintelligence purposes. DoD intelligence components may provide assistance to the Federal Bureau of Investigation and other law enforcement authorities in accordance with Procedure 12.

B. EXPLANATION OF UNDEFINED TERMS

Physical search means any intrusion upon a person or a person's property or possessions to obtain items of property or information. The term does not include examination of areas that are in plain view and visible to the unaided eye if no physical trespass is undertaken, and does not include examinations of abandoned property left in a public place. The term also does not include any intrusion authorized as necessary to accomplish lawful electronic surveillance conducted pursuant to Parts 1 and 2 of Procedure 5.

C. PROCEDURES1. Unconsented physical searches within the United States.

a. Searches of active duty military personnel for counterintelligence purposes. The counterintelligence elements of the Military Departments are authorized to conduct unconsented physical searches in the United States for counterintelligence purposes of the person or property of active duty military personnel, when authorized by a military commander empowered to approve physical searches for law enforcement purposes pursuant to rule 315(d) of the Manual for Courts Martial, Executive Order 12198 (reference (h)), based upon a finding of probable cause to believe such persons are acting as agents of foreign powers. For purposes of this section, the term "agent of a foreign power" refers to an individual who meets the criteria set forth in subparagraph C.2.b.(2), below.

b. Other unconsented physical searches. Except as permitted by section A., above, DoD intelligence components may not conduct unconsented physical searches of persons and property within the United States for foreign intelligence or counterintelligence purposes. DoD intelligence components may, however, request the FBI to conduct such searches. All such requests, shall be in writing; shall contain the information required in subparagraph C.2.b.(1) through (6), below; and be approved by an official designated in paragraph C.2.c., below. A copy of each such request shall be furnished the General Counsel, DoD.

2. Unconsented physical searches outside the United States.

a. Searches of active duty military personnel for counterintelligence purposes. The counterintelligence elements of the Military Departments may conduct unconsented physical searches of the person or property of active duty military personnel outside the United States for counterintelligence purposes

when authorized by a military commander empowered to approve physical searches for law enforcement purposes pursuant to rule 315(d) of the Manual for Courts Martial, Executive Order 12198 (reference (h)), based upon a finding of probable cause to believe such persons are acting as agents of foreign powers. For purposes of this section, the term "agent of a foreign power" refers to an individual who meets the criteria set forth in subparagraph C.2.B.(2), below.

b. Other unconsented physical searches. DoD intelligence components may conduct other unconsented physical searches for foreign intelligence and counterintelligence purposes of the person or property of United States persons outside the United States only pursuant to the approval of the Attorney General. Requests for such approval will be forwarded by a senior official designated in paragraph C.2.c., below, to the Attorney General and shall include:

(1) An identification of the person or description of the property to be searched.

(2) A statement of facts supporting a finding that there is probable cause to believe the subject of the search is:

(a) A person who, for or on behalf of a foreign power, is engaged in clandestine intelligence activities (including covert activities intended to affect the political or governmental process), sabotage, or international terrorist activities, activities in preparation for international terrorist activities, or who conspires with, or knowingly aids and abets a person engaging in such activities;

(b) A person who is an officer or employee of a foreign power;

(c) A person unlawfully acting for, or pursuant to the direction of, a foreign power. The mere fact that a person's activities may benefit or further the aims of a foreign power does not justify an unconsented physical search without evidence that the person is taking direction from, or acting in knowing concert with, the foreign power;

(d) A corporation or other entity that is owned or controlled directly or indirectly by a foreign power; or

(e) A person in contact with, or acting in collaboration with, an intelligence or security service of a foreign power for the purpose of providing access to information or material classified by the United States to which such person has access.

(3) A statement of facts supporting a finding that the search is necessary to obtain significant foreign intelligence or counterintelligence.

(4) A statement of facts supporting a finding that the significant foreign intelligence or counterintelligence expected to be obtained could not be obtained by less intrusive means.

(5) A description of the significant foreign intelligence or counterintelligence expected to be obtained from the search.

(6) A description of the extent of the search and a statement of facts supporting a finding that the search will involve the least amount of physical intrusion that will accomplish the objective sought.

(7) A description of the expected dissemination of the product of the search, including a description of the procedures that will govern the retention and dissemination of information about United States persons acquired incidental to the search.

c. Requests for approval of unconsented physical searches under paragraph C.2.b. must be made by:

- (1) The Secretary or the Deputy Secretary of Defense;
- (2) The Secretary or the Under Secretary of a Military Department;
- (3) The Director, National Security Agency; or
- (4) The Director, Defense Intelligence Agency.

PROCEDURE 8. SEARCHES AND EXAMINATION  
OF MAIL

A. APPLICABILITY

This procedure applies to the opening of mail in United States postal channels, and the use of mail covers with respect to such mail, for foreign intelligence and counterintelligence purposes. It also applies to the opening of mail to or from United States persons where such activity is conducted outside the United States and such mail is not in United States postal channels.

B. EXPLANATION OF UNDEFINED TERMS

1. Mail within United States postal channels includes:

a. Mail while in transit within, among, and between the United States, its territories and possessions (including mail of foreign origin which is passed by a foreign postal administration to the United States Postal Service for forwarding to a foreign postal administration under a postal treaty or convention, and mail temporarily in the hands of the United States Customs Service or the Department of Agriculture), Army-Air Force (APO) and Navy (FPO) post offices, and mail for delivery to the United Nations, N.Y.; and

b. International mail en route to an addressee in the United States or its possessions after passage to United States Postal Service from a foreign postal administration or en route to an addressee abroad before passage to a foreign postal administration.

As a rule, mail shall be considered in such postal channels until the moment it is delivered manually in the United States to the specific addressee named on the envelope, or his authorized agent.

2. To examine mail means to employ a mail cover with respect to such mail.

3. Mail cover means the process by which a record is made of any data appearing on the outside cover of any class of mail matter as permitted by law, other than that necessary for the delivery of mail or administration of the postal service.

C. PROCEDURES

1. Searches of mail within United States postal channels.

a. Applicable postal regulations do not permit DoD intelligence components to detain or open first class mail within United States postal channels for foreign intelligence and counterintelligence purposes, or to request such action by the U.S. Postal Service.

b. DoD intelligence components may request appropriate U.S. postal authorities to inspect, or authorize the inspection, of the contents of second, third, or fourth class mail in United States postal channels, for such purposes,

in accordance with applicable postal regulations. Such components may also request appropriate U.S. postal authorities to detain, or permit the detention of, mail that may become subject to search under this section, in accordance with applicable postal regulations.

2. Searches of mail outside United States postal channels.

a. DoD intelligence components are authorized to open mail to or from a United States person that is found outside United States postal channels only pursuant to the approval of the Attorney General. Requests for such approval shall be treated as a request for an unconsented physical search under paragraph C.2.b. of Procedure 7.

b. Heads of DoD intelligence components may authorize the opening of mail outside U.S. postal channels when both the sender and intended recipient are other than United States persons if such searches are otherwise lawful and consistent with any Status of Forces Agreement that may be in effect.

3. Mail covers

a. DoD intelligence components may request U.S. postal authorities to examine mail in U.S. postal channels, for counterintelligence purposes, in accordance with applicable postal regulations.

b. DoD intelligence components may also request mail covers with respect to mail to or from a United States person that is outside U.S. postal channels, in accordance with appropriate law and procedure of the host government, and any Status of Forces Agreement that may be in effect.



## PROCEDURE 9. PHYSICAL SURVEILLANCE

A. APPLICABILITY

This procedure applies only to the physical surveillance of United States persons by DoD intelligence components for foreign intelligence and counter-intelligence purposes. This procedure does not apply to physical surveillance conducted as part of a training exercise when the subjects are participants in the exercise.

B. EXPLANATION OF UNDEFINED TERMS

The term physical surveillance means a systematic and deliberate observation of a person by any means on a continuing basis, or the acquisition of a nonpublic communication by a person not a party thereto or visibly present thereat through any means not involving electronic surveillance.

C. PROCEDURES

1. Criteria for physical surveillance in the United States. Within the United States, DoD intelligence components may conduct unconsented physical surveillances for foreign intelligence and counterintelligence purposes against United States persons who are present or former employees of the intelligence component concerned; present or former contractors of such components or their present or former employees; applicants for such employment or contracting; or military persons employed by a nonintelligence element of a Military Service. Any physical surveillance within the United States that occurs outside a DoD installation shall be coordinated with the FBI and other law enforcement agencies as may be appropriate.

2. Criteria for physical surveillance outside the United States. Outside the United States, DoD intelligence components may conduct unconsented physical surveillance of United States persons in one of the categories identified in subsection C.1., above. In addition, such components may conduct physical surveillance of other United States persons in the course of a lawful foreign intelligence or counterintelligence investigation, provided (a) such surveillance is consistent with the laws and policy of the host government and does not violate any Status of Forces Agreement that may be in effect; and (b) that physical surveillance of a United States person abroad to collect foreign intelligence may be authorized only to obtain significant information that cannot be obtained by other means.

3. Required approvals for physical surveillance.

a. Persons within DoD investigative jurisdiction. Physical surveillances within the United States or which involve United States persons within DoD investigative jurisdiction overseas may be approved by the head of the DoD intelligence component concerned or by designated senior officials of such components in accordance with this procedure.

b. Persons outside DoD investigative jurisdiction. Outside the United States, physical surveillances of United States persons who are not within the investigative jurisdiction of the DoD intelligence component concerned will be forwarded through appropriate channels to the Deputy Under Secretary of Defense (Policy) for approval. Such requests shall indicate coordination with the Central Intelligence Agency.

PROCEDURE 10. UNDISCLOSED PARTICIPATION  
IN ORGANIZATIONS

A. APPLICABILITY

This procedure applies to participation by employees of DoD intelligence components in any organization within the United States, or any organization outside the United States that constitutes a United States person, when such participation is on behalf of any entity of the intelligence community. These procedures do not apply to participation in organizations for solely personal purposes.

B. EXPLANATION OF UNDEFINED TERMS

1. Domestic activities refers to activities that take place within the United States that do not involve a significant connection with a foreign power, organization or person.

2. The term organization includes corporations and other commercial organizations, academic institutions, clubs, professional societies, associations, and any other group whose existence is formalized in some manner or otherwise functions on a continuing basis.

3. An organization within the United States means all organizations physically located within the geographical boundaries of the United States whether or not they constitute a United States persons. Thus, a branch, subsidiary, or office of an organization within the United States, which is physically located outside the United States, is not considered as an organization within the United States.

4. Participation refers to any action undertaken within the structure or framework of the organization involved. Such actions include serving as a representative or agent of the organization; acquiring membership; attending meetings not open to the public, including social functions for the organization as a whole; carrying out the work or functions of the organization; and contributing funds to the organization other than in payment for goods or services. Actions taken outside the organizational framework, however, do not constitute participation. Thus, attendance at meetings or social gatherings which involve organization members but are not functions or activities of the the organization itself does not constitute participation.

5. Participation is on behalf of an agency within the intelligence community when an employee is tasked or requested to take action within an organization for the benefit of such agency. Such employee may already be a member of the organization or may be asked to join. Actions undertaken for the benefit of an intelligence agency include collecting information, identifying potential sources or contacts, or establishing and maintaining cover. If a cooperating source furnishes information to an intelligence agency which he or she obtained by participation within an organization, but was not given prior direction or tasking by the intelligence agency to collect such information, then such participation was not on behalf of such agency.

6. Participation is solely for personal purposes, if undertaken at the initiative and expense of the employee for the employee's benefit.

### C. PROCEDURES FOR UNDISCLOSED PARTICIPATION

Except as permitted herein, employees of DoD intelligence components may participate on behalf of such components in organizations within the United States, or in organizations outside the United States that constitute United States persons, only if their affiliation with the intelligence component concerned is disclosed to an appropriate official of the organization in accordance with section D., above. Participation without such disclosure is permitted only if it is consistent with the limitations set forth in subsection C.1., below, and has been approved in accordance with subsection C.2., below.

#### 1. Limitations on undisclosed participation.

a. Lawful purpose. No undisclosed participation shall be permitted under this procedure unless it is essential to achieving a lawful foreign intelligence or counterintelligence purpose within the assigned mission of the collecting DoD intelligence component.

b. Limitations on use of undisclosed participation for foreign intelligence purposes within the United States. Undisclosed participation may not be authorized within the United States for the purpose of collecting foreign intelligence from or about a United States person, nor to collect information necessary to assess United States persons as potential sources of assistance to foreign intelligence activities. This does not preclude the collection of information about such persons, volunteered by cooperating sources participating in organizations to which such persons belong, however, if otherwise permitted by Procedure 2.

c. Duration of Participation. Authorization to participate under paragraph C.2.a. and b. shall be limited to the period covered by such participation which shall be no longer than 12 months. Participation which lasts longer than 12 months shall be reapproved by the appropriate official on an annual basis in accordance with this procedure.

d. Participation for the purpose of influencing the activities of the organization or its members. No participation under this procedure shall be authorized for the purpose of influencing the activities of the organization in question, or its members, unless such participation is undertaken on behalf of the FBI in the course of a lawful investigation, or the organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power. Any DoD intelligence component that desires to undertake participation for such purpose shall forward its request to the Deputy Under Secretary of Defense (Policy) setting forth the relevant facts justifying such participation and explaining the nature of its contemplated activity. Such participation may be approved by the DUSD(P) with the concurrence of the General Counsel, DoD.

#### 2. Required Approvals

a. Undisclosed participation that may be approved within the DoD intelligence component. Undisclosed participation on behalf of a DoD intelligence component may be authorized within such component under the following circumstances:

(1) Participation in meetings open to the public. For purposes of this section, a seminar or conference sponsored by a professional organization that is open to persons of a particular profession whether or not they are members of the organization itself or have received a special invitation, shall be considered a meeting open to the public.

(2) Participation in organizations that permit other persons acknowledged to the organization to be employees of the U.S. Government to participate.

(3) Participation in educational or professional organizations for the purpose of enhancing the professional skills, knowledge, or capabilities of employees.

(4) Participation in seminars, forums, conferences, exhibitions, trade fairs, workshops, symposiums, and similar types of meetings, sponsored by organizations in which the employee is a member, has been invited to participate, or when the sponsoring organization does not require disclosure of the participants' employment affiliations, for the purpose of collecting significant foreign intelligence that is generally made available to participants at such meetings, and does not involve the domestic activities of the organization or its members.

b. Participation that may be approved by senior intelligence officials. Undisclosed participation may be authorized by the Deputy Under Secretary of Defense (Policy); the Director, Defense Intelligence Agency; the Assistant Chief of Staff for Intelligence, Department of Army; the Commanding General, U.S. Army Intelligence and Security Command; the Director of Naval Intelligence; the Director of Intelligence, U.S. Marine Corps; the Assistant Chief of Staff, Intelligence, United States Air Force; the Director, Naval Investigative Service; the Commanding Officer, Air Force Office of Special Investigations; or their single designees, for the following purposes:

(1) To collect significant foreign intelligence outside the United States, or from or about other than United States persons within the United States, provided no information involving the domestic activities of the organization or its members may be collected.

(2) For counterintelligence purposes, at the written request of the Federal Bureau of Investigation.

(3) To collect significant counterintelligence about other than United States persons, or about United States persons who are within the investigative jurisdiction of the Department of Defense, provided any such participation that occurs within the United States shall be coordinated with the Federal Bureau of Investigation.

(4) To collect information necessary to identify and assess other than United States persons as potential sources of assistance for foreign intelligence and counterintelligence activities.

(5) To collect information necessary to identify United States persons as potential sources of assistance to foreign intelligence and counterintelligence activities.

(6) To develop or maintain cover necessary for the security of foreign intelligence or counterintelligence activities.

(7) Outside the United States, to assess United States persons as potential sources of assistance to foreign intelligence and counterintelligence activities.

**D. DISCLOSURE REQUIREMENT**

1. Disclosure of the intelligence affiliation of an employee of a DoD intelligence component shall be made to an executive officer of the organization in question, or to an official in charge of membership, attendance or the records of the organization concerned.

2. Disclosure may be made by the DoD intelligence component involved, an authorized DoD official, or by another component of the Intelligence Community that is otherwise authorized to take such action on behalf of the DoD intelligence component concerned.

## PROCEDURE 11. CONTRACTING FOR GOODS AND SERVICES

A. APPLICABILITY

This procedure applies to contracting or other arrangements with United States persons for the procurement of goods and services by DoD intelligence components within the United States. This procedure does not apply to contracting with government entities, or to the enrollment of individual students in academic institutions. The latter situation is governed by Procedure 10.

B. PROCEDURES

1. Contracts with academic institutions. DoD intelligence components may enter into a contract for goods or services with an academic institution only if prior to the making of the contract, the intelligence component has disclosed to appropriate officials of the academic institution the fact of sponsorship by a DoD intelligence component.

2. Contracts with commercial organizations, private institutions, and individuals. Contracting by or for a DoD intelligence component with commercial organizations, private institutions, or private individuals within the United States may be done without revealing the sponsorship of the intelligence component if:

a. The contract is for published material available to the general public or for routine goods or services necessary for the support of approved activities, such as credit cards, car rentals, travel, lodging, meals, rental of office space or apartments, and other items incident to approved activities; or

b. There is a written determination by the Secretary or the Under Secretary of a Military Department, the Director of the National Security Agency, the Director of the Defense Intelligence Agency, or the Deputy Under Secretary of Defense (Policy) that the sponsorship of a DoD intelligence component must be concealed to protect the activities of the DoD intelligence component concerned.

C. EFFECT OF NONCOMPLIANCE

No contract shall be void or voidable for failure to comply with this procedure.

## PROCEDURE 12. PROVISION OF ASSISTANCE TO LAW ENFORCEMENT AUTHORITIES

A. APPLICABILITY

This procedure applies to the provision of assistance by DoD intelligence components to law enforcement authorities. It incorporates the specific limitations on such assistance contained in E.O. 12333 (reference (a)), together with the general limitations and approval requirements of DoD Directive 5525.5 (reference (i)).

B. PROCEDURES

1. Cooperation with law enforcement authorities. Consistent with the limitations contained in DoD Directive 5525.5 (reference (i)), and subsection B.2., below, DoD intelligence components are authorized to cooperate with law enforcement authorities for the purpose of:

a. Investigating or preventing clandestine intelligence activities by foreign powers, international narcotics activities, or international terrorist activities;

b. Protecting DoD employees, information, property, and facilities;  
and

c. Preventing, detecting, or investigating other violations of  
law.

2. Types of permissible assistance. DoD intelligence components may provide the following types of assistance to law enforcement authorities:

a. Incidentally-acquired information reasonably believed to indicate a violation of federal law shall be provided in accordance with the procedures adopted pursuant to section 1.7 (a) of E.O. 12333 (reference (a));

b. Incidentally-acquired information reasonably believed to indicate a violation of state, local, or foreign law may be provided in accordance with procedures adopted by the heads of DoD Components;

c. Specialized equipment and facilities may be provided to federal law enforcement authorities, and, when lives are endangered, to state and local law enforcement authorities, provided such assistance is consistent with, and has been approved by an official authorized pursuant to, enclosure 3 of DoD Directive 5525.5 (reference (i)); and

d. Personnel who are employees of DoD intelligence components may be assigned to assist federal law enforcement authorities, and, when lives are endangered, state and local law enforcement authorities, provided such use is consistent with, and has been approved by an official authorized pursuant to, enclosure 4 of DoD Directive 5525.5 (reference (i)). Such official shall ensure that the General Counsel of the providing DoD Component concurs in such use.

e. Assistance may be rendered to law enforcement agencies and security services of foreign governments or international organizations in accordance with established policy and applicable Status of Forces Agreements; provided, that DoD intelligence components may not request or participate in activities of such agencies undertaken against United States persons that would not be permitted such components under these procedures.



PROCEDURE 13. EXPERIMENTATION ON HUMAN SUBJECTS FOR INTELLIGENCE PURPOSES

A. APPLICABILITY

This procedure applies to experimentation on human subjects if such experimentation is conducted by or on behalf of a DoD intelligence component. This procedure does not apply to experimentation on animal subjects.

B. EXPLANATION OF UNDEFINED TERMS

1. Experimentation in this context means any research or testing activity involving human subjects that may expose such subjects to the possibility of permanent or temporary injury (including physical or psychological damage and damage to the reputation of such persons) beyond the risks of injury to which such subjects are ordinarily exposed in their daily lives.

2. Experimentation is conducted on behalf of a DoD intelligence component if it is conducted under contract to that component or to another DoD component for the benefit of the intelligence component or at the request of such a component regardless of the existence of a contractual relationship.

3. Human subjects in this context includes any person whether or not such person is a United States person.

C. PROCEDURES

1. Experimentation on human subjects conducted by or on behalf of a DoD intelligence component may be undertaken only with the informed consent of the subject, in accordance with guidelines issued by the Department of Health and Human Services, setting out conditions that safeguard the welfare of such subjects.

2. DoD intelligence components may not engage in or contract for experimentation on human subjects without approval of the Secretary or Deputy Secretary of Defense, or the Secretary or Under Secretary of a Military Department, as appropriate.

## PROCEDURE 14. EMPLOYEE CONDUCT

A. APPLICABILITY

This procedure sets forth the responsibilities of employees of DoD intelligence components to conduct themselves in accordance with this Regulation and other applicable policy. It also provides that DoD intelligence components shall ensure, as appropriate, that these policies and guidelines are made known to their employees.

B. PROCEDURES

1. Employee responsibilities. Employees shall conduct intelligence activities only pursuant to, and in accordance with, Executive Order 12333 (reference (a)) and this Regulation. In conducting such activities, employees shall not exceed the authorities granted the employing DoD intelligence component by law; Executive Order, including E.O. 12333 (reference (a)), and applicable DoD directives.

2. Familiarity with restrictions.

a. Each DoD intelligence component shall familiarize its personnel with the provisions of E.O. 12333 (reference (a)), this Regulation, and any instructions implementing this Regulation which apply to the operations and activities of such component. At a minimum, such familiarization shall contain:

(1) Applicable portions of Procedures 1 through 4;

(2) A summary of other procedures that pertains to collection techniques which are, or may be, employed by the DoD intelligence component concerned; and

(3) A statement of individual employee reporting responsibility under Procedure 15.

b. The Assistant to the Secretary of Defense (Intelligence Oversight) (ATSD(IO)) and each Inspector General responsible for a DoD intelligence component shall ensure, as part of their inspections, that procedures are in effect which will achieve the objectives set forth in paragraph B.2.a., above.

3. Responsibilities of the heads of DoD Components. The heads of DoD Components that constitute, or contain, DoD intelligence components shall:

a. Ensure that all proposals for intelligence activities which may be unlawful, in whole or in part, or may be contrary to applicable Executive Branch or DoD policy are referred to the General Counsel responsible for such component.

b. Ensure that no adverse action is taken against any employee because the employee reports activities pursuant to Procedure 15.

c. Impose such sanctions as may be appropriate upon any employee who violates the provisions of this Regulation or any instruction promulgated thereunder.

d. In any case involving serious or continuing breaches of security by either DoD or non-DoD employees, recommend to the Secretary of Defense appropriate investigative actions.

e. Ensure that the General Counsel and Inspector General with responsibility for the component, as well as the General Counsel, DoD, and the ATSD(IO), have access to all information concerning the intelligence activities of that component necessary to perform their oversight responsibilities.

f. Ensure that employees cooperate fully with the Intelligence Oversight Board and its representatives.

PROCEDURE 15. IDENTIFYING, INVESTIGATING,  
AND REPORTING QUESTIONABLE ACTIVITIES

A. APPLICABILITY

This procedure provides for the identification, investigation, and reporting of questionable intelligence activities.

B. EXPLANATION OF UNDEFINED TERMS

1. The term "questionable activity," as used herein, refers to any conduct that constitutes, or is related to, an intelligence activity that may violate the law, any Executive Order or Presidential directive, including E.O. 12333 (reference (a)), or applicable DoD policy, including this Regulation.

2. The terms "General Counsel" and "Inspector General," as used herein, refer, unless otherwise specified, to any General Counsel or Inspector General with responsibility for one or more DoD intelligence components. Unless otherwise indicated, the term "Inspector General" shall also include the ATSD(IO).

C. PROCEDURES

1. Identification.

a. Each employee shall report any questionable activity to the General Counsel or Inspector General for the DoD intelligence component concerned, or to the General Counsel, DoD, or ATSD(IO).

b. Inspectors General, as part of their inspection of DoD intelligence components, and General Counsels, as part of their oversight responsibilities shall seek to determine if such components are involved in any questionable activities. If such activities have been or are being undertaken, the matter shall be investigated under subsection C.2., below. If such activities have been undertaken but were not reported, the Inspector General shall also ascertain the reason for such failure and recommend appropriate corrective action.

c. Inspectors General, as part of their oversight responsibilities, shall, as appropriate, ascertain whether any organizations, staffs, or offices within their respective jurisdictions but not otherwise specifically identified as DoD intelligence components, are being used for foreign intelligence or counterintelligence purposes to which Part 2 of E.O. 12333 (reference (a)), applies, and, if so, shall ensure the activities of such components are in compliance with this Regulation and applicable DoD policy.

d. Inspectors General, as part of their inspection of DoD intelligence components, shall ensure that procedures exist within such components for the reporting of questionable activities, and that employees of such components are aware of their responsibilities to report such activities.

2. Investigation.

a. Each report of a questionable activity shall be investigated to the extent necessary to determine the facts and assess whether the activity is legal and is consistent with applicable policy.

b. When appropriate, questionable activities reported to a General Counsel shall be referred to the corresponding Inspector General for investigation, and if reported to an Inspector General, shall be referred to the corresponding General Counsel to determine whether the activity is legal and consistent with applicable policy. Reports made to the DoD General Counsel or the ATSD(IO) may be referred, after consultation between these officials, to the appropriate Inspector General and General Counsel for investigation and evaluation.

c. Investigations shall be conducted expeditiously. The officials responsible for these investigations may, in accordance with established procedures, obtain assistance from within the component concerned, or from other DoD Components, when necessary, to complete such investigations in a timely manner.

d. To complete such investigations, General Counsels and Inspectors General shall have access to all relevant information regardless of classification or compartmentation.

3. Reports.

a. Each General Counsel and Inspector General shall report immediately to the General Counsel, DoD, and the ATSD(IO) questionable activities of a serious nature.

b. Each General Counsel and Inspector General shall submit to the ATSD(IO) a quarterly report describing those activities that come to their attention during the quarter reasonably believed to be illegal or contrary to Executive Order or Presidential directive, or applicable DoD policy; and actions taken with respect to such activities. The reports shall also include significant oversight activities undertaken during the quarter and any suggestions for improvements in the oversight system. Separate, joint, or consolidated reports may be submitted. These reports should be prepared in accordance with DoD Directive 5000.11 (reference (j)).

c. All reports made pursuant to paragraph C.3.a. and b., above, which involve a possible violation of federal criminal law shall be considered by the General Counsel concerned in accordance with the procedures adopted pursuant to section 1.7(a) of E.O. 12333 (reference (a)).

d. The General Counsel, DoD, and the ATSD(IO) may review the findings of other General Counsels and Inspector Generals with respect to questionable activities.

e. The ATSD(IO) and the General Counsel, DoD, shall report in a timely manner to the White House Intelligence Oversight Board all activities that come to their attention that are reasonably believed to be illegal or contrary to Executive Order or Presidential directive. They will also advise appropriate officials of the Office of the Secretary of Defense of such activities.

f. These reporting requirements are exempt from formal approval and licensing in accordance with subsection VII.G. of enclosure 3 to DoD Directive 5000.19 (reference (k)).

## APPENDIX A

DEFINITIONS

1. Administrative purposes. Information is collected for "administrative purposes" when it is necessary for the administration of the component concerned but is not collected directly in performance of the intelligence activities assigned such component. Examples include information relating to the past performance of potential contractors; information to enable such components to discharge their public affairs and legislative duties, including the maintenance of correspondence files; the maintenance of employee personnel and training records; and training materials or documents produced at training facilities.

2. Available publicly. Information that has been published or broadcast for general public consumption, is available on request to a member of the general public, could lawfully be seen or heard by any casual observer, or is made available at a meeting open to the general public. In this context, the "general public" also means general availability to persons in a military community even though the military community is not open to the civilian general public.

3. Communications security. Protective measures taken to deny unauthorized persons information derived from telecommunications of the U.S. Government related to national security and to ensure the authenticity of such telecommunications.

4. Consent. The agreement by a person or organization to permit DoD intelligence components to take particular actions that affect the person or organization. Consent may be oral or written unless a specific form of consent is required by a particular procedure. Consent may be implied if adequate notice is provided that a particular action (such as entering a building) carries with it the presumption of consent to an accompanying action (such as search of briefcases). (Questions regarding what is adequate notice in particular circumstances should be referred to the legal office responsible for advising the DoD intelligence component concerned.)

5. Counterintelligence. Information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or international terrorist activities, but not including personnel, physical, document, or communications security programs.

6. Counterintelligence investigation. Includes inquiries and other activities undertaken to determine whether a particular United States person is acting for, or on behalf of, a foreign power for purposes of conducting espionage and other intelligence activities, sabotage, assassinations, international terrorist activities, and actions to neutralize such acts.

7. DoD Component. Includes the Office of the Secretary of Defense, each of the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

8. DoD intelligence components. Include the following organizations:
- a. The National Security Agency/Central Security Service.
  - b. The Defense Intelligence Agency.
  - c. The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs.
  - d. The Assistant Chief of Staff for Intelligence, Army General Staff.
  - e. The Office of Naval Intelligence.
  - f. The Assistant Chief of Staff, Intelligence, U.S. Air Force.
  - g. The Army Intelligence and Security Command.
  - h. The Naval Intelligence Command.
  - i. The Naval Security Group Command.
  - j. The Director of Intelligence, U.S. Marine Corps.
  - k. The Air Force Intelligence Service.
  - l. The Electronic Security Command, U.S. Air Force.
  - m. The counterintelligence elements of the Naval Investigative Service.
  - n. The counterintelligence elements of the Air Force Office of Special Investigations.
  - o. The 650th Military Intelligence Group, SHAPE.
  - p. Other organizations, staffs, and offices, when used for foreign intelligence or counterintelligence activities to which part 2 of E.O. 12333 (reference (a)), applies, provided that the heads of such organizations, staffs, and offices shall not be considered as heads of DoD intelligence components for purposes of this Regulation.
9. Electronic surveillance. Acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction finding equipment solely to determine the location of a transmitter. (Electronic surveillance within the United States is subject to the definitions in the Foreign Intelligence Surveillance Act of 1978 (reference (b)).)
10. Employee. A person employed by, assigned to, or acting for an agency within the intelligence community, including contractors and persons otherwise acting at the direction of such an agency.



11. Foreign intelligence. Information relating to the capabilities, intentions, and activities of foreign powers, organizations, or persons, but not including counterintelligence except for information on international terrorist activities.

12. Foreign power. Any foreign government (regardless of whether recognized by the United States), foreign-based political party (or faction thereof), foreign military force, foreign-based terrorist group, or any organization composed, in major part, of any such entity or entities.

13. Intelligence activities. Refers to all activities that DoD intelligence components are authorized to undertake pursuant to Executive Order 12333 (reference (a)).

14. Intelligence community and an agency of or within the intelligence community. Refers to the following organizations:

- a. The Central Intelligence Agency (CIA).
- b. The National Security Agency (NSA).
- c. The Defense Intelligence Agency (DIA).
- d. The Offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs.
- e. The Bureau of Intelligence and Research of the Department of State.
- f. The intelligence elements of the Army, Navy, Air Force and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy.
- g. The staff elements of the Office of the Director of Central Intelligence.

15. International Narcotics Activities. Refers to activities outside the United States to produce, transfer or sell narcotics or other substances controlled in accordance with title 21, United States Code, Sections 811 and 812.

16. International Terrorist Activities. Activities undertaken by or in support of terrorists or terrorist organizations that occur totally outside the United States, or that transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which the perpetrators operate or seek asylum.

17. Lawful investigation. An investigation qualifies as a lawful investigation if the subject of the investigation is within DoD investigative jurisdiction; if it is conducted by a DoD Component that has authorization to conduct the particular type of investigation concerned (for example, counterintelligence, personnel security, physical security, communications security); and if the investigation is conducted in accordance with applicable law and policy, including E.O. 12333 and this Regulation.

18. Personnel Security. Measures designed to insure that persons employed, or being considered for employment, in sensitive positions of trust are suitable for such employment with respect to loyalty, character, emotional stability, and reliability and that such employment is clearly consistent with the interests of the national security. It includes measures designed to ensure that persons granted access to classified information remain suitable for such access and that access is consistent with the interests of national security.

19. Personnel security investigation:

a. An inquiry into the activities of a person granted access to intelligence or other classified information; or a person who is being considered for access to intelligence or other classified information, including persons who are granted or may be granted access to facilities of DoD intelligence components; or a person to be assigned or retained in a position with sensitive duties. The investigation is designed to develop information pertaining to the suitability, eligibility, and trustworthiness of the individual with respect to loyalty, character, emotional stability and reliability.

b. Inquiries and other activities directed against DoD employees or members of a Military Service to determine the facts of possible voluntary or involuntary compromise of classified information by them.

c. The collection of information about or from military personnel in the course of tactical training exercises for security training purposes.

20. Physical security. The physical measures taken to prevent unauthorized access to, and prevent the damage or loss of, equipment, facilities, materiel and documents; and measures undertaken to protect DoD personnel from physical threats to their safety.

21. Physical security investigation. All inquiries, inspections, or surveys of the effectiveness of controls and procedures designed to provide physical security; and all inquiries and other actions undertaken to obtain information pertaining to physical threats to DoD personnel or property.

22. Reasonable belief. A reasonable belief arises when the facts and circumstances are such that a reasonable person would hold the belief. Reasonable belief must rest on facts and circumstances that can be articulated; "hunches" or intuitions are not sufficient. Reasonable belief can be based on experience, training, and knowledge in foreign intelligence or counterintelligence work applied to facts and circumstances at hand, so that a trained and experienced "reasonable person" might hold a reasonable belief sufficient to satisfy this criterion when someone unfamiliar with foreign intelligence or counterintelligence work might not.

23. Signals intelligence. A category of intelligence including communications intelligence, electronic intelligence, and foreign instrumentation signals intelligence, either individually or in combination.

24. United States. When used to describe a place, the term shall include the territories under the sovereignty of the United States.

25. United States person.

a. The term "United States person" means:

- (1) A United States citizen;
- (2) An alien known by the DoD intelligence component concerned to be a permanent resident alien;
- (3) An unincorporated association substantially composed of United States citizens or permanent resident aliens;
- (4) A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments. A corporation or corporate subsidiary incorporated abroad, even if partially or wholly owned by a corporation incorporated in the United States, is not a United States person.

b. A person or organization outside the United States shall be presumed not to be a United States person unless specific information to the contrary is obtained. An alien in the United States shall be presumed not to be a United States person unless specific information to the contrary is obtained.

c. A permanent resident alien is a foreign national lawfully admitted into the United States for permanent residence.

REPORTING AND USE OF INFORMATION  
CONCERNING FEDERAL CRIMES

- I. Scope. Section 1.7(a) of Executive Order 12333 requires senior officials of the Intelligence Community to:

Report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures.

These procedures govern the reporting of information concerning possible federal crimes to the Attorney General and to federal investigative agencies acquired by agencies within the Intelligence Community in the course of their functions. They also govern the handling and use of such information by the Department of Justice and federal investigative agencies in any subsequent investigations or litigation. These procedures are promulgated under the authority of 28 U.S.C. § 535 and Executive Order 12333, § 1-7(a).

II. Definitions.

- A. "Agency" means those agencies or organizations within the Intelligence Community, as defined in Executive Order 12333, §3.4(f), except for the intelligence elements of the Federal Bureau of Investigation and the Department of the Treasury.
- B. "Department" means the Department of Justice.
- C. "Employee" means:
  - 1. Any individual employed by or assigned to the Agency including a military member;
  - 2. Former military members, officers or employees of an Agency, for purposes of offenses committed during their employment or service; and
  - 3. Former military members, officers or employees of an Agency, for offenses involving a violation of 18 U.S.C. §207.
- D. Except as specifically provided otherwise, "General Counsel" means the general counsel of the Agency or the department of which it is a component or a person designated by him to act on his behalf.

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General Considerations.

A. These procedures govern the reporting of information which the Agency or its current employees become aware of in the course of performing their functions. They do not authorize the Agency to conduct any investigation or to collect any information not otherwise authorized by law.

B. These procedures require a current employee of the Agency to report to the General counsel facts or circumstances that appear to the employee to indicate that a criminal offense may have been committed. Reports to the Department of Justice or to a federal investigative agency will be made by the Agency as set forth below. These procedures do not apply to any allegations of violations solely of the Uniform code of Military Justice.

C. When an Agency has received allegations, complaints or information (hereinafter "allegations") tending to show that an employee of that agency may have violated any federal criminal statute, or another person may have violated a federal criminal statute contained within one of the categories listed in Section IV below, the Agency or other appropriate component within the Department of Defense shall within a reasonable period of time determine through a preliminary inquiry whether or not there is any basis to the allegations (that is, are clearly not frivolous or false). If the allegations can be established as without basis, the General counsel will make an appropriate record of his findings and no reporting under these procedures is required. If the allegations cannot be established as without basis, the reporting procedures set forth below will be followed. A preliminary inquiry shall not include interviews with persons other than current employees of the Department of Defense or examination of premises not occupied by the Department of Defense without the prior notification and approval of the Department of Justice, except that the Agency or other appropriate component within the Department of Defense may interview a non-employee of the Department of Defense for the sole purpose of determining the truth of a report that such non-employee has made an allegation or complaint against an Agency employee. The foregoing provisions shall neither limit the techniques which the Agency may otherwise be authorized to use, nor limit the responsibility of the Agency to provide for its security functions pursuant to Executive Order 12333.

D. Allegations shall be reported pursuant to the procedures in effect at the time the allegations came to the attention of the Agency.

E. Allegations that appear to involve crimes against property and involve less than \$500 need not be reported pursuant to the procedures set forth below. The General Counsel will, however, make an appropriate record of his findings.

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F. In lieu of following the procedures set forth below, the General Counsel or an appropriate Assistant General Counsel may orally report periodically, but at least quarterly, to the Department concerning those offenses which, while subject to these reporting requirements, are in the opinion of the General Counsel of such a minor nature that no further investigation or prosecution of the matter is necessary. If an oral report is made, the General Counsel or an appropriate Assistant General Counsel will meet with the Assistant Attorney General or a designated Deputy Assistant Attorney General of the Criminal Division, Department of Justice to obtain his concurrence or nonconcurrence with the General Counsel's opinion. If such concurrence is obtained, no further reporting under these procedures is required. If concurrence is not obtained, the reporting procedures set forth below will be followed.

#### IV. Non-Employee Reportable Offenses

A. Allegations concerning offenses in the following categories are reportable, if they pertain to a person other than an employee.

1. Crimes involving intentional infliction or threat of death or serious physical harm. Such crimes may include:

Assault -- 18 U.S.C. §§ 111-113(A)

Homicide -- 18 U.S.C. §§ 1111-14, 1116, 2113(e)

Kidnapping -- 18 U.S.C. § 1201

Presidential assassination, assault or kidnapping  
-- 18 U.S.C. § 1751

Threats against the President and successors to  
the President -- 18 U.S.C. § 871

2. Crimes likely to impact upon the national security, defense or foreign relations of the United States. Such crimes may include:

Communicating classified information -- 50 U.S.C.  
§ 783(b)

Espionage -- 18 U.S.C. §§ 793-98

Sabotage -- 18 U.S.C. §§ 2151-57

Arms Export Control Act -- 22 U.S.C. § 2778

Atomic Energy Act -- 42 U.S.C. §§ 2077, 2092,  
2111, 2122.

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Export Administration Act -- 50 U.S.C. App.  
§ 2410

Neutrality offenses -- 18 U.S.C. §§ 956-60

Trading with the Enemy Act -- 50 U.S.C. App.  
§§5(b), 16

Agents of foreign government -- 18 U.S.C. § 951

Government employee acting for a foreign  
principal -- 18 U.S.C. § 219

Communications, receipt or disclosure of  
restricted data -- 42 U.S.C. § 2274-77

Registration of certain persons trained in foreign  
espionage systems -- 50 U.S.C. §§ 851, 855.

Foreign Agents registration Act -- 22 U.S.C. § 618(a)

Unlawfully entering the United States -- 8 U.S.C.  
§ 1325

Any other offense not heretofore listed which is  
contained with Chapter 45 of Title 18 U.S.C.

3. Crimes involving foreign interference with the  
integrity of United States governmental institutions  
or processes. Such crimes may include, when  
committed by foreign persons:

Bribery of public officials and witnesses - 18  
U.S.C. § 201-208

Conspiracy to injure or impede an officer -- 18  
U.S.C. § 372

Election contributions and expenditures -- 2  
U.S.C. §§ 441a-j, 599-600

4. Crimes which appear to have been committed by or  
on behalf of a foreign power or in connection  
with international terrorist activity. Such crimes  
may include:

Aircraft piracy -- 49 U.S.C. § 1472(i)

Distribution, possession, and use of explosives --  
18 U.S.C. §§ 842(a)-(i).

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Unlawful electronic surveillance -- 18 U.S.C. §§ 2511(1), 2512(1), 50 U.S.C. § 1809

Passport and visa offenses -- 18 U.S.C. §§ 1541-44, 1546

Distribution, possession, transfer, and use of firearms -- 18 U.S.C. § 922, 924; 26 U.S.C. 5861

Transporting explosives on board aircraft -- 49 U.S.C. § 1472(h)

Conspiracy to injure or impede an officer -- 18 U.S.C. § 372

Counterfeiting U.S. obligations -- 18 U.S.C. § 471-74

False statements and false official papers -- 18 U.S.C. §§ 1001-02, 1017-18

Obstruction of justice -- 18 U.S.C. §§ 1503-06, 1508-10

Perjury -- 18 U.S.C. § 1621-23

B. Any conspiracy or attempt to commit a crime reportable under this section shall be reported if the conspiracy or attempt itself meets the applicable reporting criteria.

C. The General Counsel will make an appropriate record of any matter brought to his attention which he determines is not reportable under this section.

D. Notwithstanding any of the provisions above, the General Counsel may report any other possible offense when he believes it should be reported.

V. Reporting Procedures -- Format

The fact that a referral has been made pursuant to these procedures shall be reflected in a letter or memorandum sent by the Agency to the entity designated to receive the referral under these procedures. In each instance that a referral is required, information sufficiently detailed to allow the Department of Justice to make informed judgments concerning the appropriate course of subsequent investigations or litigation shall be transmitted, either orally or in writing, to the Attorney General, the Assistant or a designated Deputy Assistant Attorney General, Criminal Division, Department of Justice, or the Assistant Director, Criminal Investigative or Intelligence

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division, Federal Bureau of Investigation. The Agency shall supplement its referral when any additional information relating to the original referral comes to its attention.

VI. Reporting Procedures -- No Security Considerations Involved

A. Where the Agency determines in accordance with these procedures that a matter must be reported, and where the Agency further determines that no public disclosure of classified information or intelligence sources and methods would result from further investigation or prosecution, and the security of ongoing intelligence operations would not be jeopardized thereby, the Agency will report the matter to the appropriate federal investigative agency, or to the appropriate United States Attorney for an investigative or prosecutive determination. In each such instance, the Agency shall also notify the Department of Justice, Criminal Division of the referral.

B. The Agency will inform the entity receiving such report that, unless notified otherwise by the Agency or by the Department, the security and consulting requirements set forth in Section VII of these procedures need not be followed.

C. A federal investigative agency or United States Attorney receiving information from the Agency pursuant to Section VI of these procedures is required promptly to advise the Agency of the initiation and conclusion of any investigation or prosecution involving such information.

VII. Reporting Procedures -- Security Considerations Involved

A. Where the Agency determines in accordance with these procedures that a matter must be reported, and where the Agency also determines that further investigation or prosecution of the matter would or might result in a public disclosure of classified information or intelligence sources or methods or would jeopardize the security of ongoing intelligence operations, the Agency will report the matter to the Assistant Attorney General or a designated Deputy Assistant Attorney General, Criminal Division, Department of Justice or Assistant Director, Criminal Investigative or Intelligence Division, Federal Bureau of Investigation, in the manner described in section V, above. In any instance in which a matter is reported to the Federal Bureau of Investigation, the Agency shall also notify the Department of Justice, Criminal Division of the referral. Upon request, the Agency will explain the security or operational

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problems that would or might arise from a criminal investigation or prosecution.

B. Persons who are the subject of reports made pursuant to this section may be identified as John Doe # \_\_\_\_\_ in any written document associated therewith. The true identities of such persons will be made available when the Department of Justice determines that they are essential to any subsequent investigation or prosecution of the matter reported.

C. Information contained in Agency reports will be disseminated to persons other than the Assistant or Deputy Assistant Attorney General or the Assistant Director, Criminal Investigative or Intelligence Division, FBI, only as follows:

1. No Department or Federal investigative employee will be given access to classified information unless that person has been granted appropriate clearances, including any special access approvals. The Assistant or Deputy Assistant Attorney General or the Assistant Director, Criminal Investigative or Intelligence Division, FBI, will ensure that access by an employee is necessary for the performance of an official function and that access is limited to the minimum number of cleared persons necessary for investigative or prosecutorial purposes. The Department will provide the head of the Agency with a detailed report regarding any disclosure not authorized by these procedures and will take appropriate disciplinary action against any employee who participates in such a disclosure.

2. With regard to information reported to the Criminal Division, Department of Justice, which the general counsel of an Agency designates in writing as particularly sensitive and for which special dissemination controls are requested pursuant to this provision, dissemination will only occur after consultation with the General Counsel of the Agency. The designation of information as particularly sensitive may be made only by the general counsel or acting general counsel of an Agency.

3. Except as permitted by these procedures, classified information which has been received by the Department, the FBI, or other federal investigative agency pursuant to these procedures may not be disseminated outside of that entity without the advance written consent of the General Counsel or the head of the Agency.

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D. When it becomes apparent to the Department or federal investigative agency that any investigative or legal action may result in the disclosure of classified information or intelligence sources or methods, the Department or federal investigative agency will, at the earliest possible time, fully advise and consult with the Agency to determine the appropriate course of action and the potential harm to intelligence sources and methods by the contemplated use or disclosure of the classified information. Except in exigent circumstances no investigative or legal action will be taken without such advance notice and consultation.

1. "Exigent circumstances" means situations in which a person's life or physical safety is reasonably believed to be in imminent danger, or information relating to the national security is reasonably believed to be in imminent danger of compromise, or expiration of a statute of limitations is imminent, or loss of essential evidence in any of these cases is imminent, or a crime is about to be committed, or the opportunity to arrest a person is about to be lost where there is probable cause to believe that the person has committed a crime, and in which it is not possible for telephonic advance notice and consultation to occur.

2. If, due to exigent circumstances, any investigation or significant contemplated action in any legal proceeding is taken without advance notice or consultation, the Department or federal investigative agency, within twenty-four hours of taking such action, will provide the reporting agency an explanation of the circumstances requiring that action. Thereafter, there will be full adherence to the notification and consultation requirements of these procedures.

3. For purposes of this provision, consultation will include the specific investigative and legal actions the Department or federal investigative agency proposes to take and a specification of legal and investigative issues involved. The purpose of the consultation is to assure an opportunity for the Agency to provide its judgment to the Department or federal investigative agency regarding the potential damage, if any, to the national security of the disclosure or use of the information at issue. During this process, the Agency will promptly provide as detailed an identification and analysis as is possible at the time of the potential consequences for the intelligence sources or methods and for the national security from the contemplated disclosure or use of the classified information. The Agency will also

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provide any changes to or elaborations of this analysis as soon as they become evident.

4. If the Agency and the Department or federal investigative agency agreed that the risk of the use or disclosure and any resulting consequences are acceptable, the contemplated investigative or legal action may commence or proceed.

5. If the Agency and the Department of Justice or federal investigative agency are unable to agree as to the appropriate use of classified information provided pursuant to these procedures by the Agency, each entity will be responsible for pursuing timely resolution of such issues as may exist through appropriate channels within their respective organizations. Each entity will provide notice to the other entity if it intends to seek a resolution of the issues by a higher authority in the other entity's department or agency. Where issues remain, they shall be referred to the Attorney General for final determination after appropriate consultation with the head of the Agency, and, where appropriate, the Director of Central Intelligence. The decision of the Attorney General may be appealed to the President with prior notice to the Attorney General and the Director of Central Intelligence. While such an appeal is pending, no action will be taken that would render moot the President's decision.

E. When security considerations warrant such action, any matter may be reported directly by the head of the Agency to the Attorney General or the Acting Attorney General, in the manner described in section V above. In considering such reports, the Attorney General or the Acting Attorney General may consult with any person whose advice he considers necessary and who has the required security clearance, provided that the Attorney General or the Acting Attorney General will consult with the head of the reporting agency or the General Counsel thereof concerning dissemination of material designated "Eyes Only."

F. If requested by the Agency, classified information provided by the Agency to the Department or a federal investigative agency will, to the maximum extent possible and consistent with investigative and prosecutive requirements, be stored by the Agency.

#### VIII. Relation to Other Procedures and Agreements

A. If the Agency for administrative or security reasons desires to conduct a more extensive investigation into the

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activities of its employees relating to any matter reported pursuant to these procedures, it will inform the Department or federal investigative agency, as is appropriate. The Agency may take appropriate administrative, disciplinary, or other adverse action at any time against any employee whose activities are reported under these procedures. However, such investigations and disciplinary action will be coordinated with the appropriate investigative or prosecuting officials to avoid prejudice to any criminal investigation or prosecution.

B. Nothing in these procedures shall be construed to restrict the exchange of information among the Agencies in the Intelligence Community or between those Agencies and law enforcement entities other than the Department of Justice.

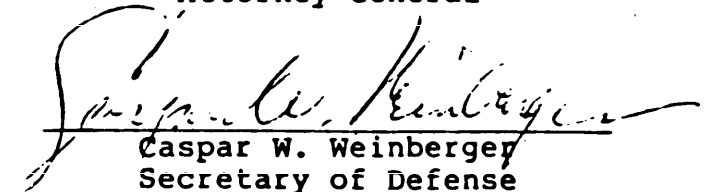
C. If the subject of a referral is an employee of another agency other than a person subject to the Uniform Code of Military Justice, the Criminal Division may refer the matter to that agency for preliminary investigation and possible administrative action. The employing agency will report the results of any such preliminary investigation under the procedures for reporting possible crimes by agency employees.

D. Notwithstanding the November 23, 1955, Memorandum of Understanding between the Department of Defense and the Department of Justice, notice of crimes which violate both federal criminal statutes and the Uniform Code of Military Justice shall be given to the Department of Justice as provided. Thereafter, the handling of matters relating to individuals subject to the Uniform Code of Military Justice shall be coordinated by the Criminal Division with the appropriate military service in accordance with existing agreements between the Departments of Justice and Defense.

12/8/82  
Date

26 NOV 1982  
Date

  
William French Smith  
Attorney General

  
Caspar W. Weinberger  
Secretary of Defense